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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) C-91-20423
)
)
Plaintiff,) ORDER GRANTING ENTRY
) OF CONSENT DECREE
v.)
)
WATKINS-JOHNSON COMPANY,)
)
)
)
Defendant.)

After reviewing the public comments on the Consent Decree, along with the declaration of Richard Beal, an environmental enforcement agent employed by the United States Department of Justice, the Court finds that the Consent Decree entered into between the parties is fair, reasonable, and consistent with the statutory objectives of CERCLA. Accordingly, the United States' motion for entry of the Consent Decree is GRANTED and ENTERED as a final judgment, effective as of the date of this order.

IT IS SO ORDERED.

DATED: 10/31/91


U.S. DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the United States Department of Justice and is a person of such age and discretion as to be competent to serve papers.

That on November 5, 1991, she served a copy of the accompanying ORDER GRANTING ENTRY OF CONSENT DECREE, by depositing it in an envelope, with postage prepaid, in the United States mail at an authorized depository, addressed as follows:

Barry S. Sandals
Morrison & Forester
345 California Street
San Francisco, California 94104-2675
Attorney for Defendant Watkins-Johnson Co.

Paul E. Locke, Esquire
Assistant U.S. Attorney
450 Golden Gate Avenue, P.O. Box 36055
San Francisco, California 94102
Attorney for Plaintiff the United States

Martha L. Black
Assistant Regional Counsel
U. S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

San Lorenzo Valley Water District
Attention: Mr. Al Haynes
13060 Central Avenue
Post Office Box H
Boulder Creek, California 95006

Environmental Health Service
County of Santa Cruz
Attention: Steven Baiocchi
701 Ocean Street, Third Floor
Santa Cruz, California 95060

Kathe Turner
KATHE TURNER

1 RICHARD B. STEWART
Assistant Attorney General
2 Environment and Natural Resources
Division
3 United States Department of Justice
Washington, D.C. 20530

4 RICHARD L. BEAL
5 Environmental Enforcement Section
Environment and Natural Resources
6 Division
United States Department of Justice
7 301 Howard Street, Suite 870
San Francisco, California 94105
8 (415) 744-6491, FTS 484-6491

9 WILLIAM MCGIVERN
United States Attorney
10 PAUL E. LOCKE
Chief, Lands Section
11 U.S. Attorney's Office
Northern District of California
12 450 Golden Gate Avenue
San Francisco, California 94102
13 (415) 556-1126, FTS 556-1126

14 NANCY J. MARVEL
Regional Counsel
15 JEAN E. RICE
Assistant Regional Counsel
16 U.S. Environmental Protection Agency
75 Hawthorne Street
17 San Francisco, California 94105
18 (415) 744-1080, FTS 484-1080

19 Attorneys for Plaintiff
United States of America

BARRY S. SANDALS
Morrison & Foerster
345 California Street
San Francisco, California 94104
(415) 677-7117

RICHARD G. BELL
CAROL MILLIE
Watkins-Johnson Company
3333 Hillview Avenue
Palo Alto, California 94304
(415) 493-4141

Attorneys for Defendant
Watkins-Johnson Company

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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JUL 22 1991

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

23 UNITED STATES OF AMERICA,
24 Plaintiff,
25 v.
26 WATKINS-JOHNSON COMPANY,
27 Defendant.

28 ///

C91 20423 SW

Civil No.

CONSENT DECREE

EAT

BARRY M. HARTMAN
Acting Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

RICHARD L. BEAL
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
301 Howard Street, Suite 870
San Francisco, California 94105
(415) 744-6485, FTS 484-6485

WILLIAM MCGIVERN
United States Attorney
PAUL E. LOCKE
Chief, Lands Section
U.S. Attorney's Office
Northern District of California
450 Golden Gate Avenue
San Francisco, California
(415) 556-1126, FTS 556-1126

NANCY J. MARVEL
Regional Counsel
MARTHA L. BLACK
Assistant Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
(415) 744, FTS 484-1080

Attorneys for Plaintiff United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

WATKINS-JOHNSON COMPANY,

Defendant.

Civil No. C 91 20423 SW(EAI)

CERTIFICATE OF SERVICE
OF ORDER GRANTING
ENTRY OF CONSENT DECREE

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1 F. In response to a release or threat of a release of a
2 hazardous substance at or from the Site, EPA entered into a Con-
3 sent Order with Defendant requiring Defendant to conduct the
4 Remedial Investigation and Feasibility Study for the Site
5 ("RI/FS") pursuant to 40 C.F.R. § 300.68.

6 G. Defendant submitted the final RI and FS reports in April
7 1989 and November 1989, respectively, both of which EPA approved.
8 Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, on February
9 14, 1990, EPA published notice of the completion of the RI/FS and
10 the Proposed Plan for remedial action. EPA made the RI/FS and
11 the Proposed Plan for remedial action available for public com-
12 ment from February 14, 1990 through April 14, 1990.

13 H. The remedial action selected by EPA to be implemented at
14 the Site is embodied in a final Record of Decision ("ROD"), ex-
15 ecuted on June 29, 1990. EPA provided the State reasonable op-
16 portunity to review and comment on the ROD.

17 I. In accordance with Section 121(d)(1) of CERCLA, EPA and
18 Defendant agree that the remedial action selected by EPA and em-
19 bodied in the ROD, attached as Appendix A to this Consent Decree,
20 will attain a degree of cleanup of hazardous substances, pol-
21 lutants and contaminants released into the environment and of
22 control of further release which at a minimum assures protection
23 of human health and the environment.

24 J. Based on the information presently available to EPA,
25 EPA believes that the Work will be properly and promptly con-
26 ducted by the Defendant.

27 K. The Remedial Action selected by the ROD and the Work to
28 be performed by the Defendant shall constitute a response action

1 taken or ordered by the President solely for the purposes of Sec-
2 tion 113(j) of CERCLA.

3 L. The Court finds that implementation of this Consent
4 Decree will expedite the cleanup of the Site and will avoid
5 prolonged and complicated litigation between the Parties, and
6 that entry of this Consent Decree is fair, reasonable and in the
7 public interest.

8 M. By signing this Consent Decree, Defendant does not ad-
9 mit, accept or intend to acknowledge any liability or fault with
10 respect to conditions at or arising from the Site or with respect
11 to any other matter arising out of or relating to the conditions
12 at or arising from the Site.

13

14 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as fol-
15 lows:

16 I. JURISDICTION

17 The parties agree that the Court has jurisdiction over the
18 subject matter of this action and the signatories to this Consent
19 Decree pursuant to 42 U.S.C. §§ 9606, 9607, 9613, 9622 and
20 28 U.S.C. §§ 1331, 1345. Defendant shall not challenge the
21 Court's jurisdiction to enter and enforce this Consent Decree.
22 Defendant waives service of summons and, for the purpose of this
23 Consent Decree, agrees to submit itself to the jurisdiction and
24 venue of this Court.

25 II. PARTIES

26 The parties to this Consent Decree are the United States of
27 America, and Defendant, Watkins-Johnson Company.

28 ///

1 III. BINDING EFFECT

2 This Consent Decree shall apply to and be binding upon the
3 United States and upon Defendant, its successors and assigns. No
4 change in ownership or corporate or partnership status will in
5 any way alter Defendant's responsibilities under this Consent
6 Decree. Defendant is responsible and will remain responsible for
7 carrying out all activities required of Defendant under this Con-
8 sent Decree. Defendant shall provide a copy of this Consent
9 Decree, as entered, and shall provide all relevant additions and
10 modifications to the Consent Decree, as appropriate, to each per-
11 son, including all contractors and subcontractors, retained to
12 perform the Work contemplated by this Consent Decree, and shall
13 condition any contract for the Work upon compliance with this
14 Consent Decree.

15 IV. DEFINITIONS

16 Unless otherwise expressly provided herein or below, terms
17 used in this Consent Decree that are defined in CERCLA, or in
18 regulations promulgated under CERCLA, shall have the meaning as-
19 signed to them in the statute or regulations. Whenever documents
20 are referred to, the reference shall include all amendments,
21 modifications, and supplements, except as otherwise provided.
22 Whenever the terms listed below are used in this Consent Decree
23 or in the Exhibits or Appendices, attached hereto and incor-
24 porated herein, the following definitions shall apply:

25 A. "Appendix A" shall mean The Record Of Decision (ROD)
26 for the Remedial Action.

27 B. "Appendix B" shall mean the Schedule of Submission of
28 Major Deliverables.

- 1 C. "CERCLA" shall mean the Comprehensive Environmental
2 Response, Compensation, and Liability Act of 1980,
3 42 U.S.C. § 9601 et seq., as amended by the Superfund
4 Amendments and Reauthorization Act of 1986, Pub. L. No.
5 99-499, Stat. 1613 (1986).
- 6 D. "Clean-up Standard(s)" shall mean those treatment stan-
7 dards, standards of control, and other substantive re-
8 quirements, criteria, or limitations set forth in the
9 ROD and in Section VII (Work To Be Performed) of this
10 Consent Decree.
- 11 E. "Compliance Monitoring" shall mean those measures
12 necessary to verify the effectiveness and performance
13 of the Remedial Action and required pursuant to Section
14 VII (Work to be Performed).
- 15 F. "Consent Decree" shall mean this Decree and all appen-
16 dices attached hereto. In the event of conflict be-
17 tween this Decree and any appendix, this Decree shall
18 control.
- 19 G. "Contractor" shall mean the individual, company or com-
20 panies retained by or on behalf of Defendant to under-
21 take and complete the Remedial Action.
- 22 H. "Covered Matters" shall mean any civil liability to the
23 United States for causes of action arising under Sec-
24 tions 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606,
25 9607(a), the Work implemented under Section VII (Work
26 To Be Performed), oversight costs associated with the
27 performance of that Work and for all outstanding Past
28 ///

1 Response Costs, including interest accrued thereon, in-
2 curred by the United States.

3 I. "Day" shall mean a calendar day unless expressly stated
4 to be a working day. "Working day" shall mean a day
5 other than a Saturday, Sunday or legal holiday. In
6 computing any period of time under this Consent Decree,
7 where the last day would fall on a Saturday, Sunday, or
8 legal holiday, the period shall run until the end of
9 the next working day.

10 J. "Defendant" shall mean the Watkins-Johnson Company.

11 K. "Environmental Professional" shall include any environ-
12 mental professional approved by EPA under Section VII
13 (Work To Be Performed) and any registered professional
14 engineer or registered geologist approved by EPA.

15 L. "EPA" shall mean the United States Environmental
16 Protection Agency.

17 M. "Future Response Costs" shall mean all costs of
18 response as defined by Section 101(25) of CERCLA,
19 42 U.S.C. § 9601(25), including, but not limited to,
20 interest accrued to the United States and direct and
21 indirect costs that the United States incurs after Oc-
22 tober 31, 1990 in contractor costs and after October
23 20, 1990 in overseeing the Work, including, but not
24 limited to, payroll costs, travel costs, laboratory
25 costs, the costs incurred pursuant to Section XIII
26 (Site Access), and the costs of reviewing or developing
27 plans, reports and other items pursuant to this Consent
28 Decree, verifying the Work, or otherwise implementing

1 or enforcing this Consent Decree, but excluding costs
2 that are inconsistent with the NCP. Future Response
3 Costs also shall include all costs, including indirect
4 costs, incurred by the Agency for Toxic Substances and
5 Disease Registry in connection with the Site on any
6 date.

7 N. "National Contingency Plan" or "NCP" shall mean the Na-
8 tional Oil and Hazardous Substances Pollution Contin-
9 gency Plan, 40 C.F.R. Part 300, and shall be used as
10 that term is referred to in Section 105 of CERCLA,
11 42 U.S.C. § 9605, including any amendments thereto.

12 O. "Operation and Maintenance" or "O&M" shall mean all ac-
13 tivities required to maintain the effectiveness of the
14 Remedial Action as required under the Remedial Action
15 Plan approved or developed by EPA pursuant to this Con-
16 sent Decree and Section VII (Work To Be Performed).

17 P. "Oversight" shall mean the United States' and/or its
18 authorized contractors' inspection of remedial Work and
19 all other actions taken to verify the adequacy of all
20 activities undertaken and reports submitted by Defen-
21 dant as required under the terms of this Consent
22 Decree.

23 Q. "Parties" shall mean the United States and Defendant.

24 R. "Past Response Costs" shall mean all costs, including,
25 but not limited to, interest accrued to the United
26 States and direct and indirect costs incurred by the
27 United States with regard to the Site before October
28

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1 21, 1990, except that with respect to contractor costs,
2 before November 1, 1990.

3 S. "Plaintiff" or "United States" shall mean the United
4 States of America.

5 T. "Record of Decision" or "ROD" shall mean the document
6 signed by the EPA Region IX Regional Administrator on
7 June 29, 1990, which selects and describes the Remedial
8 Action to be conducted at the Site, and which is at-
9 tached hereto as Appendix A.

10 U. "Remedial Action" shall mean the implementation of the
11 remedy selected in the ROD, in accordance with Section
12 VII hereof (Work To Be Performed), and any schedules or
13 plans required to be submitted pursuant thereto.

14 V. "Remedial Construction" shall mean the phases of the
15 Remedial Action involving the construction of the
16 remedy in accordance with the Remedial Design docu-
17 ments, the ROD and this Consent Decree.

18 W. "Remedial Design" shall mean the phases of the Work
19 wherein engineering plans and technical specifications
20 are developed for implementation of the Remedial Ac-
21 tions, in accordance with the ROD and this Consent
22 Decree.

23 X. "Site" or "the Site" shall mean the Watkins-Johnson Su-
24 perfund site described in the ROD; encompassing County
25 of Santa Cruz Assessor's parcel numbers 22-221-01, 22-
26 221-02, and 22-221-03, and the areal extent of con-
27 tamination and all suitable areas in very close
28 proximity to the contamination necessary for the im-

1 plementation of the response action. The Site is a
2 "facility", as that term is defined at Section 101(9)
3 of CERCLA, 42 U.S.C. § 9601(9).

4 Y. "State" shall mean the State of California.

5 Z. "Waste Material(s)" shall mean (1) any "hazardous sub-
6 stance" under Section 101(14) of CERCLA, 42 U.S.C.
7 § 9601(14) and (2) any pollutant or contaminant under
8 Section 101(33), 42 U.S.C. § 9601(33).

9 AA. "Work" shall mean all activities Defendant is required
10 to perform under this Consent Decree, including, but
11 not limited to, O&M, except those required by Section
12 XVIII (Retention of Records).

13 BB. "Work Plan" or "The Work Plan" shall mean the Remedial
14 Design/Remedial Action Work Plan ("Work Plan")
15 developed by Defendant as set forth in Section VII
16 (Work To Be Performed), Subsection B.1.

17 V. PURPOSE

18 The purposes of this Consent Decree are: 1) to serve the
19 public interest by protecting the public health, welfare and the
20 environment from releases and threatened releases of Waste
21 Materials at or from the Site by the implementation by Defendant
22 of remedial actions and operations, monitoring, and maintenance
23 outlined in Section VII (Work To Be Performed) of this Consent
24 Decree; 2) to obtain reimbursement from Defendant for certain of
25 Plaintiff's response costs; and 3) to settle claims against
26 Defendant asserted by Plaintiff in the Complaint filed in this
27 matter.

28 ///

1 VI. NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE

2 A. Within forty-five (45) days after EPA notifies Defendant
3 of the entry of this Consent Decree, Defendant shall record a
4 copy of this Consent Decree with the Recorder's Office, Santa
5 Cruz County, State of California. Within this same forty-five
6 day period, Defendant also shall record a notation on each deed,
7 title, or other instrument of conveyance from Defendant for
8 property which is included in the Site. Any such notation shall
9 state that the property is subject to this Consent Decree and
10 reference the recorded location of the Consent Decree and any
11 restrictions applicable to the property under this Consent
12 Decree.

13 B. The obligations of Defendant with respect to the provi-
14 sion of access under Section XIII (Site Access) and the implemen-
15 tation of any institutional controls adopted under Section VII
16 (Work To Be Performed), shall run with the land and shall be
17 binding upon any and all persons who subsequently acquire any in-
18 terest in the Site or portion thereof (hereinafter "successors-
19 in-title"). Within forty-five (45) days after EPA notifies
20 Defendant of the entry of this Consent Decree, Defendant shall
21 record at the Registry of Deeds, or other office where land
22 ownership and transfer records are maintained for the property, a
23 notice of this Consent Decree and obligation to provide access
24 and related covenants. Each subsequent deed to any such property
25 included in the Site shall reference the recorded location of
26 such notice and covenants applicable to the property.

27 C. Defendant and any Successor-in-Title shall, prior to the
28 conveyance of any such interest, give written notice of this Con-

1 sent Decree to the grantee and written notice to EPA of the
2 proposed conveyance, the name and address of the grantee, and the
3 date on which notice of the Consent Decree was given to the
4 grantee. In the event of any such conveyance, Defendant's
5 obligations under this Consent Decree shall continue to be met by
6 Defendant. In addition, if the United States approves, the
7 grantee may perform some or all of the Work under this Consent
8 Decree. In no event shall the conveyance of an interest in
9 property that includes, or is a portion of, the Site release or
10 otherwise affect the liability of Defendant to comply with the
11 Consent Decree. Except as set forth in this Consent Decree,
12 nothing in this Consent Decree shall be construed to require any
13 approval by EPA of any proposed conveyance or to grant EPA
14 authority to restrict or otherwise condition any proposed con-
15 veyance.

16 VII. WORK TO BE PERFORMED

17 A. General Obligations Regarding the Remedial Action

18 1. Defendant shall finance and perform the Remedial Action
19 and O&M for the Site as described in this Consent Decree, in the
20 ROD and any modifications thereto; provided, however, that Defen-
21 dant may invoke the procedures set forth in Section XXIV.D
22 (Dispute Resolution) to dispute EPA's determination that a
23 modification to the ROD is necessary. The ROD, all design
24 specifications, the Work Plan and other schedules attached or ap-
25 proved by EPA are hereby incorporated by reference and made a
26 part of this Consent Decree. In the event of conflict between
27 this Decree and any appendix, this Decree shall control. All
28 Work shall be conducted in accordance with the National Contin-

1 agency Plan (NCP), pertinent EPA guidance documents including, but
2 not limited to, the EPA Superfund Remedial Design and Remedial
3 Action Guidance (June 1986, "RD/RA Guidance"), volumes 1 and 2 of
4 the CERCLA Compliance With Other Laws Manual, all the provisions
5 of this Consent Decree, the ROD and all design specifications,
6 the Work Plan and other plans or schedules attached or approved
7 by EPA.

8 2. Pursuant to 42 U.S.C. § 9621(e) and the NCP, no federal
9 state or local permit shall be required for any portion of the
10 Work conducted entirely on the Site. Where any portion of the
11 Work requires a federal, state or local permit pursuant to any
12 otherwise applicable requirements, the Defendant shall submit
13 timely applications and take all other actions necessary to ob-
14 tain such permits or approvals.

15 3. Defendant shall appoint a representative ("Project
16 Coordinator") designated by it to act on its behalf to coordinate
17 the Remedial Action, in accordance with Section XII (Project
18 Coordinator).

19 4. All Work to be performed by Defendant pursuant to this
20 Consent Decree shall be under the direction and supervision of a
21 qualified environmental professional and performed by a qualified
22 contractor. Within fourteen (14) days after EPA notifies Defen-
23 dant of entry of this Consent Decree by the Court and prior to
24 the initiation of Work at the Site, Defendant shall notify EPA,
25 in writing, of the name, title, and qualifications of the
26 proposed supervising environmental professional, and the names of
27 the principal contractors and/or subcontractors proposed to be
28 used in carrying out the Remedial Action pursuant to this Consent

1 Decree. Selection of any such environmental professional and
2 contractor and/or subcontractor shall be subject to approval by
3 the EPA and shall be subject to the provisions of Section XXXIV
4 (Indemnification and Insurance). If at any time thereafter
5 Defendant proposes to change supervising professionals or prin-
6 cipal contractor and/or subcontractors, Defendant shall give
7 written notice to EPA and shall obtain approval from EPA before
8 the new supervising professional or principal contractor and/or
9 subcontractor performs any Work under this Consent Decree. All
10 Work performed by Defendant shall be performed by qualified
11 professionals and/or contractors or subcontractors in accordance
12 with the conditions and schedules specified in this Consent
13 Decree.

14 5. While Defendant may collect, treat, stage, and secure
15 Waste Materials related to the Remedial Action on site, it shall
16 not redeposit Waste Materials back into the Site unless consis-
17 tent with the ROD, this Consent Decree or other approval of EPA.

18 6. Defendant shall dispose of any Waste Materials taken
19 off-site in compliance with EPA's Revised Procedures for Im-
20 plementing Off-Site Response Actions ("Off-Site Policy", EPA OS-
21 WER Directive 9834.11, November 13, 1987) and any amendments
22 thereto.

23 7. Defendant shall submit all reports prepared by its con-
24 tractors and subcontractors concerning the Remedial Design and
25 Remedial Action to EPA and EPA's designated oversight personnel,
26 according to the schedules set forth in this Consent Decree.

27 8. Defendant shall sample groundwater and soil vapor
28 monitoring wells designated in the EPA-approved Sampling and

1 Analysis Plan on a quarterly basis in the months of March, June,
2 September, and December consistent with Subsections B(5) and B(8)
3 of this Section VII, Section XI (Quality Assurance/Quality Con-
4 trol) and Section XVII (Data Exchange: Sampling and Analysis).

5 9. Defendant shall perform Compliance Monitoring as fol-
6 lows:

7 (a) Defendant shall demonstrate, for at least
8 four (4) consecutive quarters while the extraction and treatment
9 systems are operating, that concentrations of contaminants in the
10 groundwater and soils are at or below the Clean-up Standards set
11 forth in Subsection D(2) (Clean-up Standards) at each sampling
12 point designated in the EPA-approved Sampling and Analysis Plan
13 for each quarter before Defendant may begin the Compliance
14 Monitoring Period.

15 (b) The Compliance Monitoring period shall consist of
16 20 years, including: (1) 20 consecutive quarters, beginning with
17 the quarter immediately subsequent to the last of the quarters of
18 operation discussed in Subsection (a), above, and (2) thereafter,
19 15 years of no less than annual monitoring, with the frequency
20 determined by EPA in consultation with Defendant. During the
21 compliance monitoring period, Defendant shall demonstrate that
22 concentrations of contaminants continue to remain below the
23 Clean-up Standards at each sampling point designated in the EPA-
24 approved Compliance Monitoring Plan.

25 ///

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1 B. Identification of Documents to be Submitted to EPA:

2 "Deliverables"

3 1. Work Plan

4 (a) Within 45 days after EPA notifies Defendant of
5 entry of this Consent Decree, Defendant shall submit a Work Plan
6 to the EPA for the Remedial Design, Remedial Action and O&M at
7 the Site. The Work Plan shall describe the tasks necessary for
8 Defendant to implement the remedy at the Site and shall include,
9 at a minimum, a description of those tasks necessary to develop
10 the deliverables and to implement the Remedial Action in accor-
11 dance with the schedule attached as Appendix B to this Consent
12 Decree. The Work Plan shall be developed in conformance with the
13 ROD, the EPA RD/RA Guidance and any additional guidance documents
14 provided by EPA.

15 (b) The fully approved Work Plan shall be deemed incor-
16 porated into and made an enforceable part of this Consent Decree.
17 Defendant shall implement the Work detailed in the Work Plan as
18 approved or modified by EPA. Except as provided in Sections
19 XXIII (Force Majeure) and XXIV (Dispute Resolution), any noncom-
20 pliance with any EPA approved reports, plans, specifications,
21 schedules, appendices or attachments to the Work Plan or this
22 Consent Decree shall be considered a failure to comply with this
23 Consent Decree, and shall subject Defendant to stipulated
24 penalties to the extent provided in Section XXII (Stipulated
25 Penalties).

26 2. Progress Reports

27 For the first thirty-six (36) calendar months after EPA
28 notifies Defendant of entry of this Consent Decree, Defendant

1 shall provide written Progress Reports to EPA on a monthly basis.
2 These Progress Reports shall be submitted to EPA by the 15th of
3 each month for Work done the preceding month and planned for the
4 current and next months, including sampling events. After the
5 thirty-six month period, Defendant shall provide such Progress
6 Reports to EPA on a quarterly basis. These Progress Reports
7 shall be submitted to EPA by the 15th of each calendar quarter
8 for Work done the preceding quarter and planned for the current
9 quarter, including sampling events. These Progress Reports shall
10 include, at a minimum, the following:

- 11 (a) A summary of technical and field Work performed
12 since the previous report;
- 13 (b) A discussion of significant findings and events;
- 14 (c) A schedule of all Remedial Action activities, in-
15 cluding sampling events, projected to be performed or completed
16 during the next two reporting periods;
- 17 (d) A list of the deliverables due during the next
18 reporting period; and
- 19 (e) Key personnel changes.

20 3. Quarterly Monitoring Report

21 The results of the groundwater quality, water level, and
22 soil vapor monitoring program shall be documented in three quar-
23 terly and one annual report. Defendant shall submit a Quarterly
24 Monitoring Report to EPA within sixty (60) days after completion
25 of each quarter. The Quarterly Report shall contain, at a mini-
26 mum, the following:

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- 1 (a) A summary of groundwater quality, water level and
2 soil vapor monitoring activities performed during the previous
3 quarter;
- 4 (b) A summary of water level changes in the perched
5 and regional zone monitoring wells designated in the EPA-approved
6 Sampling and Analysis Plan;
- 7 (c) An evaluation of groundwater quality conditions
8 based on analytical results of groundwater samples collected;
- 9 (d) An evaluation of contaminated soil conditions
10 based on analytical results of soil vapor samples, if any, col-
11 lected and graphs of contaminant concentrations;
- 12 (e) A summary of significant determinations concerning
13 groundwater and soil quality or other aspects of the RD/RA;
- 14 (f) A tabular summary of all analytes detected at each
15 groundwater monitoring well designated in the EPA-approved Sam-
16 pling and Analysis Plan, including historical data for the calen-
17 dar year when available;
- 18 (g) A tabular summary of all analytes detected at each
19 soil vapor monitoring well designated in the EPA-approved Sam-
20 pling and Analysis Plan, including historical data for the calen-
21 dar year when available;
- 22 (h) A summary and discussion of significant events and
23 operating data for the groundwater treatment and soil vapor ex-
24 traction system(s) for the previous quarter;
- 25 (i) A summary of data validation activities and their
26 results performed in accordance with the EPA approved Quality As-
27 surance Project Plan submitted pursuant to Subsection B(8) of
28 this Section VII; and

1 (j) Maps indicating groundwater contours and the ex-
2 tent of the TCE plume in both the perched and the regional zones.

3 4. Annual Monitoring Report

4 As described in Subsection 3 above, the results of the
5 groundwater quality, water level, and soil vapor monitoring
6 program shall be documented in three quarterly and one annual
7 report. Defendant shall submit an Annual Report to EPA within 90
8 days of completing the annual sampling event. The Annual Report
9 shall summarize the groundwater and soil vapor monitoring data
10 and treatment system(s) operational data for the previous year.
11 This Annual Report shall be combined with the Fourth Quarter
12 Quarterly Report and, in addition to the elements required for
13 the Quarterly Report, shall contain, at a minimum, the following:

14 (a) An introduction including purpose, scope and a
15 summary of the year's monitoring activities, treatment system
16 operations, and any other activities related to the RD/RA;

17 (b) A summary of hydrogeologic conditions;

18 (c) A summary of groundwater quality conditions and
19 evaluation of trends observed during the calendar year based on
20 analytical results of groundwater samples collected;

21 (d) A summary of soil conditions in the area being
22 treated, if any, and an evaluation of the trends observed during
23 the calendar year based on analytical results of soil vapor
24 samples collected, if any, and contaminant concentrations, and
25 any modeling efforts performed during the previous year; and

26 (e) A summary of remedial activities performed during
27 the calendar year.

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1 5. Sampling and Analysis Plan

2 Defendant shall submit a Sampling and Analysis Plan for all
3 groundwater and soil vapor sampling events including, but not
4 limited to, those quarterly and annual monitoring events reported
5 under Subsections 3 and 4 above, and for all treatment system in-
6 fluent and effluent sampling events reported under Subsection 4
7 above. The Sampling and Analysis Plan shall be consistent with
8 current and applicable EPA guidance and shall include, at a mini-
9 mum, the following:

- 10 (a) A summary of pertinent background information;
11 (b) A discussion of the objectives of the sampling
12 effort(s);
13 (c) A summary of the locations of sampling points;
14 (d) Rationale for sampling locations, number of
15 samples, blanks and duplicates, and analytical parameters;
16 (e) A description of drilling, well construction,
17 development, and testing procedures;
18 (f) Monitoring schedule;
19 (g) Plans for disposal of contaminated or potentially
20 contaminated materials generated during sampling;
21 (h) A description of sample labeling, sealing,
22 storage, shipment, packing, and chain-of-custody procedures; and
23 (i) A description of the analytical methods to be used
24 for sample analysis.

25 6. Worker Health and Safety Plan

26 Defendant shall submit a Worker Health and Safety Plan
27 prepared in conformance with applicable Occupational Safety and
28 Health Administration ("OSHA") and EPA requirements, including

1 but not limited to OSHA regulations found at 29 C.F.R.
2 § 1910.120. Additionally, the Health and Safety Plan shall con-
3 tain an Emergency Response Plan that addresses exposure of both
4 workers at the Site and the public to potential releases or
5 spills at and from the Site.

6 7. Community Relations Plan

7 Defendant shall submit a Community Relations Plan prepared
8 in conformance with Section XXIX (Community Relations).

9 8. Quality Assurance Project Plan

10 Defendant shall submit a Quality Assurance Project Plan for
11 Remedial Design and Remedial Action activities. The Quality As-
12 surance Project Plan shall be prepared in accordance with current
13 EPA guidance, "Interim Guidelines and Specifications for Prepar-
14 ing the Quality Assurance Project Plans" (QAMS 005/80), and "EPA
15 Region IX Guidance For Preparing Quality Assurance Project Plans
16 for Superfund Remedial Projects" (9-QA-03-89, September 1989).
17 The Plan shall include, at a minimum, the following topics:

- 18 (a) Project organization and responsibility;
- 19 (b) Data quality and quality assurance objectives;
- 20 (c) Sampling procedures;
- 21 (d) Sample control and custody procedures;
- 22 (e) Procedures necessary for the implementation of
23 trial tests of the pumping and treatment system(s), the soil
24 vapor extraction system, and any other process used as part of
25 the Remedial Action;
- 26 (f) Mechanism(s) used to verify that the extraction
27 and treatment processes are operating within acceptable limits;
- 28 (g) Calibration procedures and frequency;

- (h) Analytical procedures;
- (i) Data reduction, validation and reporting;
- (j) Internal quality control checks and frequency;
- (k) Performance and system audits and frequency;
- (l) Preventative maintenance procedures and schedules;
- (m) Assessment of data quality;
- (n) Corrective action procedures; and
- (o) Quality assurance reports.

9. Remedial Design Plan

Defendant shall submit a Remedial Design Plan that contains the proposed final construction plans and specifications for the remedy described in the ROD. The Remedial Design Plan shall include, at a minimum, the following:

(a) A summary of the analyses of any hydrogeologic and/or soil vapor data obtained during Remedial Design activities;

(b) A description of the nature and extent of contaminant concentrations exceeding Clean-up Standards in the perched and regional aquifers and the soil beneath the Site;

(c) Plans and specifications for all remedial systems;

(d) A schedule for implementation of remedial activities;

(e) Cost estimates for perched zone, regional zone, and soil remedial systems;

(f) Provisions for obtaining access to property necessary for performing remedial actions; and

(g) State and local permit requirements.

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1 10. Remedial Action and O&M Plan

2 Defendant shall submit a Remedial Action and O&M Plan that
3 describes the implementation of the Remedial Action and continued
4 effective operation selected in the ROD. The Remedial Action and
5 O&M Plan shall include, at a minimum, the following topics:

6 (a) Project organization and responsibility;
7 (b) Construction schedules;
8 (c) Elements of an Operation and Maintenance Plan, in-
9 cluding, but not limited to:

- 10 (i) Description of the systems,
11 (ii) Operational procedures,
12 (iii) Operational emergency response,
13 (iv) Maintenance procedures,
14 (v) Maintenance schedules,
15 (vi) Strategies for special activities (such as
16 leachfield maintenance),
17 (vii) Parts and equipment inventory, and
18 (viii) Vendor inventory;
19 (d) Monitoring schedule for groundwater monitoring and
20 extraction wells, treatment system influent and effluent, surface
21 water near the point of discharge, and soil vapor;
22 (e) Well abandonment procedures;
23 (f) Equipment decontamination procedures; and
24 (g) Plans for disposal of contaminated or potentially
25 contaminated materials.

26 11. Data Management Plan

27 Defendant shall submit a Data Management Plan that describes
28 the proposed data collection program, data storage requirements

1 and reporting procedures for supplying performance information to
2 EPA. The Data Management Plan shall include, at a minimum, the
3 following:

- 4 (a) Identification of the types of data gathered for
5 assessing the performance of the treatment units;
- 6 (b) Location and media for storing the data;
- 7 (c) Format for providing the data and Quality
8 Assurance/Quality Control (QA/QC) information for the EPA; and
- 9 (d) Frequency of reporting the data and QA/QC informa-
10 tion to the EPA.

11 12. Quality Assurance Report

12 Defendant shall submit a Quality Assurance Report to verify
13 that the final construction plans and specifications for the
14 selected remedy were executed. The Quality Assurance Report
15 shall include, at a minimum, the following:

- 16 (a) A review of as-built drawings to ensure that
17 design changes, if any, from designs included in the Remedial
18 Design Plan do not impair the effectiveness of the remedy;
- 19 (b) A review of all quality control data and reports
20 generated to ensure that adequate quality controls were imple-
21 mented during construction;
- 22 (c) The results of a complete inspection of the
23 facility to ensure that as-built drawings adequately reflect the
24 configuration of the constructed facility;
- 25 (d) A summary list of items that must be completed
26 prior to facility operation; and
- 27 (e) Copies of as-built drawings and all quality con-
28 trol data.

1 13. Compliance Monitoring Plan

2 Defendant shall submit a Compliance Monitoring Plan that
3 describes the sampling program to verify that contaminant con-
4 centrations remain below the Clean-up Standards. The Compliance
5 Monitoring Plan shall contain, at a minimum, the following:

6 (a) A summary of pertinent background information;

7 (b) A discussion of the objectives of the sampling
8 effort(s);

9 (c) A summary of the locations of sampling points;

10 (d) Rationale for sampling locations, number of
11 samples, blanks and duplicates, and analytical parameters;

12 (e) A description of drilling, well construction,
13 development, and testing procedures;

14 (f) Monitoring schedule;

15 (g) Plans for disposal of contaminated or potentially
16 contaminated materials generated during sampling;

17 (h) A description of sample labeling, sealing,
18 storage, shipment, packing, and chain-of-custody procedures; and

19 (i) A description of the analytical methods to be used
20 for sample analysis.

21 14. Contingency Plan

22 Defendant shall submit a Contingency Plan that details the
23 actions required in the event that Compliance Monitoring results
24 in the detection of contaminants in soil or groundwater at con-
25 centrations greater than the Clean-up Standards. The Contingency
26 Plan shall address, at a minimum, the following topics:

27 (a) Notifications;

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- 1 (b) Confirmation sampling to verify exceedance of a
2 Clean-up Standard(s);
- 3 (c) Reporting of sampling results and response action
4 recommendations;
- 5 (d) Additional monitoring to verify the effectiveness
6 of a response action(s); and
- 7 (e) A schedule for implementation of activities re-
8 quired under this Subsection B(14).

9 15. Confirmation Sampling Plan

10 Defendant shall submit a Confirmation Sampling Plan that
11 describes the sampling program to be completed to verify that
12 Clean-up Standards have been achieved and maintained in order for
13 EPA to certify completion of the Remedial Action. The Confirma-
14 tion Sampling Plan shall include, at a minimum, a description of
15 sampling procedures, sampling locations, analytical methods, and
16 monitoring frequency.

17 16. Work Completion Report

18 Defendant shall submit a Work Completion Report by an en-
19 vironmental professional certifying that the Clean-up Standards
20 set forth in this Consent Decree and in the ROD have been
21 achieved, that all other Work, including, but not limited to,
22 O&M, is completed and that the requirements of the Consent Decree
23 have been met. The Work Completion Report shall contain the
24 results of the final confirmatory sampling and shall include as-
25 built drawings signed and stamped by a professional engineer
26 registered in the State of California. The Report shall contain
27 the following statement, signed by a responsible corporate offi-
28 cial of Watkins-Johnson or Defendant's Project Coordinator: "I

1 certify that the information contained in or accompanying this
2 submission is true, accurate and complete."

3 C. Obligations Regarding Deliverables

4 1. Defendant shall submit a draft and a final copy of
5 each of the deliverables described in Subsections 1, 5, 7, 8, 9,
6 10, 11, 12, 13, 14, and 15 above and a final copy of each of the
7 deliverables described in Subsections 2, 3, 4, 6, and 16 above
8 pursuant to the schedule attached to this Consent Decree as Ap-
9 pendix B. Except as provided in Sections XXIII (Force Majeure)
10 and XXIV (Dispute Resolution), any failure of Defendant to submit
11 a deliverable in compliance with the schedule will be deemed a
12 violation of this Consent Decree.

13 2. EPA will review and provide written approval or com-
14 ment, including an explanation of any disapproval, on each
15 deliverable other than Progress Reports and Quarterly and Annual
16 Monitoring Reports. EPA will review and, at its discretion,
17 provide written approval or comment, including an explanation of
18 any disapproval, on each Progress Report and Quarterly and Annual
19 Monitoring Report.

20 3. Defendant shall, within the time allotted in the
21 schedule, incorporate EPA's comments on the drafts into the final
22 and submit the final deliverable.

23 4. Except as provided in Sections XXIII (Force Majeure)
24 and XXIV (Dispute Resolution), any failure of Defendant to incor-
25 porate EPA's comments or suggestions on and modifications to the
26 draft deliverable into the final deliverable will be deemed a
27 violation of this Consent Decree and shall subject Defendant to
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1 stipulated penalties to the extent provided in Section XXII
2 (Stipulated Penalties).

3 D. Additional Obligations: Work To Be Performed

4 1. The Parties agree that neither the Work Plan nor any
5 approvals, permits or other permissions which EPA may grant re-
6 lated to this Consent Decree constitutes a warranty or represen-
7 tation of any kind by the United States that the Work Plan will
8 achieve the standards set forth in the ROD, and in Subsections
9 2(a) and 2(b) below, and shall not foreclose the United States
10 from seeking performance of all terms and conditions of this Con-
11 sent Decree.

12 2. Clean-up Standards

13 Defendant shall meet all Clean-up Standards identified in
14 the ROD with respect to the Remedial Action at the Site, includ-
15 ing, but not limited to, the following:

16 (a) Treatment of Groundwater:

17	Chloroform	0.100 ppm
18	1,2-Dichlorobenzene	0.600 ppm
19	1,4-Dichlorobenzene	0.005 ppm
20	1,1-Dichloroethane	0.005 ppm
21	1,1-Dichloroethylene	0.006 ppm
22	cis-1,2-dichloroethylene	0.006 ppm
23	Methylene Chloride	0.005 ppm
24	Tetrachloroethylene	0.005 ppm
25	1,1,1-Trichloroethane	0.200 ppm
26	1,1,2-Trichloroethane	0.032 ppm
27	Trichloroethylene	0.005 ppm
28	Vinyl Chloride	0.0005 ppm

1 (b) Treatment of Soils: As indicated in the ROD, soil
2 contamination shall be reduced to a level that no longer
3 threatens to raise groundwater contaminant concentrations above
4 the stated Clean-up Standards.

5 VIII. ADDITIONAL WORK

6 A. In the event that EPA determines or Defendant proposes
7 to EPA that additional response Work is necessary to carry out
8 the remedy described in the ROD or to meet the Clean-up Standards
9 described in the ROD or in Section VII (Work To Be Performed) of
10 this Consent Decree, notification of such additional Work will be
11 provided to each Project Coordinator.

12 B. Unless otherwise stated in writing by EPA, within 60
13 days after Defendant's receipt of notice from EPA that additional
14 Work is necessary pursuant to this Section VIII, Defendant shall
15 submit a work plan to EPA for such additional Work.

16 C. Prior to implementation of any additional Work proposed
17 by Defendant pursuant to this Section VIII, Defendant shall ob-
18 tain EPA approval.

19 D. Any additional Work proposed by Defendant and approved
20 by EPA, or determined to be necessary by EPA, shall be completed
21 by Defendant in accordance with the standards, specifications,
22 and schedules approved by EPA, subject to Subsection F of this
23 Section VIII.

24 E. If EPA disapproves any work plan Defendant submits pur-
25 suant to this Section VIII, Defendant shall submit a modified
26 work plan to EPA within 30 days after receipt of notice of EPA's
27 disapproval, subject to Section XXIV.D (Dispute Resolution).

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1 F. Defendant may invoke the procedures set forth in Section
2 XXIV.D (Dispute Resolution) to dispute EPA's determination that
3 any additional response actions are necessary to meet the Clean-
4 up Standards or to carry out the remedy selected in the ROD.

5 IX. WORKER HEALTH AND SAFETY PLAN

6 The Worker Health and Safety Plan that Defendant will submit
7 pursuant to Subsection VII.B.6 (Work To Be Performed) and Appen-
8 dix B of this Consent Decree shall be prepared in conformance
9 with applicable OSHA and EPA requirements, including but not
10 limited to OSHA regulations found at 29 C.F.R. § 1910.120. The
11 Emergency Response Plan that Defendant will submit pursuant to
12 Subsection VII.B.6 (Work To Be Performed) and Appendix B of this
13 Consent Decree shall address the potential exposure of workers at
14 the Site and the public to releases or spills at and from the
15 Site.

16 X. EPA PERIODIC REVIEW

17 A. Defendant shall conduct any studies and investigations
18 as requested by EPA in order to permit EPA to conduct reviews as
19 required by Section 121(c) of CERCLA and any applicable regula-
20 tions.

21 B. If required by Sections 113(k)(2) or 117 of CERCLA,
22 Defendant and the public will be provided with an opportunity to
23 comment on any further response actions proposed by EPA as a
24 result of the review conducted pursuant to Section 121(c) of
25 CERCLA and to submit written comments for the record during the
26 public comment period. After the period for submission of writ-
27 ten comments is closed, the Regional Administrator, EPA Region

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1 IX, or his/her delegate will determine in writing whether further
2 response actions are appropriate.

3 C. If the Regional Administrator, EPA Region IX, or
4 his/her delegate determines that information received, in whole
5 or in part, during the review conducted pursuant to Section
6 121(c) of CERCLA, indicates that the Remedial Action is not
7 protective of human health and the environment, the Defendant
8 shall undertake any further response actions EPA has determined
9 are appropriate and that are not barred under the Covenant Not To
10 Sue. Defendant shall submit a plan for such Work to EPA for ap-
11 proval in accordance with the procedures set forth in Section VII
12 (Work To Be Performed) and shall implement the plan approved by
13 EPA. However, the Defendant may invoke the procedures set forth
14 in Section XXIV (Dispute Resolution) to dispute (1) EPA's deter-
15 mination that the remedial action is not protective of human
16 health and the environment, or (2) EPA's selection of the further
17 response actions ordered. Such a dispute shall be resolved pur-
18 suant to Subsection XXIV.D (Dispute Resolution).

19 XI. QUALITY ASSURANCE/QUALITY CONTROL ("QA/QC")

20 A. Defendant shall use quality assurance, quality control,
21 and chain-of-custody procedures for all environmental
22 (treatability, design, compliance and monitoring) samples in ac-
23 cordance with EPA's "Interim Guidelines and Specifications for
24 Preparing Quality Assurance Project Plans" (QAMS-005/80), "Data
25 Quality Objective Guidance" (EPA/540/G87/003 and 004) and subse-
26 quent amendments to such guidelines upon notification to Defen-
27 dant of such amendment by EPA. Amended guidelines shall apply
28 only to procedures conducted after such notification.

1 B. Defendant shall use QA/QC procedures in accordance with
2 the Quality Assurance Project Plan ("QAPP") submitted pursuant to
3 this Consent Decree, and shall utilize standard EPA chain-of-
4 custody procedures, as documented in the National Enforcement In-
5 vestigations Center Policies and Procedures Manual as revised in
6 May 1986 and amendments thereto, and the National Enforcement In-
7 vestigations Center Manual for the Evidence Audit, published in
8 September 1981 and amendments thereto, for all sample collection
9 and analysis activities, unless other procedures are approved by
10 EPA. In order to provide quality assurance and maintain quality
11 control regarding all samples collected pursuant to this Consent
12 Decree, Defendant shall, at a minimum, ensure that the following
13 QA/QC measures are employed at laboratories utilized for
14 analysis:

15 1. All contracts with laboratories utilized by Defen-
16 dant for analysis of samples taken pursuant to this Consent
17 Decree shall provide for access of EPA personnel and EPA
18 authorized representatives to assure the accuracy of laboratory
19 results related to the Watkins-Johnson Site.

20 2. Any laboratory utilized by Defendant for analysis
21 of samples taken pursuant to this Consent Decree shall perform
22 all analyses according to EPA methods as documented in the Con-
23 tract Lab Program Statement of Work for Inorganic Analysis and
24 the Contract Lab Program Statement of Work for Organic Analysis
25 dated February 1988, or methods deemed satisfactory to EPA and
26 submit all protocols to be used for analysis to EPA in the plans
27 and documents required under this Consent Decree.

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1 3. All laboratories utilized by Defendant for analysis
2 of samples taken pursuant to this Consent Decree shall par-
3 ticipate in an EPA or EPA equivalent QA/QC program. As part of
4 the QA/QC program and upon request by EPA, such laboratories
5 shall perform at Defendant's expense analyses of samples provided
6 by EPA to demonstrate the quality of each laboratory's data.

7 C. As requested and specified by EPA, Defendant shall sub-
8 mit data to be used by EPA to verify that Defendant is complying
9 with this Section and the QAPP submitted pursuant to this Consent
10 Decree.

11 D. Data that have been verified pursuant to the QAPP and
12 reviewed and approved by EPA shall be admissible as evidence,
13 without objection except as to relevancy, in any proceeding under
14 Section XXIV (Dispute Resolution) of this Consent Decree.

15 XII. PROJECT COORDINATOR

16 A. No later than fourteen (14) days after EPA notifies
17 Defendant of the entry of this Consent Decree, EPA and Defendant
18 each shall designate a Project Coordinator to monitor the
19 progress of the Remedial Action, to coordinate communication be-
20 tween EPA and Defendant and to oversee the implementation of the
21 Work required by this Consent Decree. EPA and Defendant each
22 have the right to change their respective Project Coordinator.
23 Such a change shall be accomplished by notifying the other party
24 in writing at least five calendar days prior to the change. To
25 the maximum extent possible, communications between Defendant and
26 EPA and all documents, including reports, approvals, and other
27 correspondence concerning the activities performed pursuant to
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1 the terms and conditions of this Consent Decree, shall be
2 directed through the Project Coordinators.

3 1. The EPA Project Coordinator shall have the authority
4 vested in the On-Scene Coordinator (OSC) and the Remedial Project
5 Manager (RPM) by the NCP. In addition, EPA may designate a
6 separate On-Scene Coordinator who shall possess the authority
7 vested in the On-Scene Coordinator in the NCP.

8 2. The EPA Project Coordinator and the On-Scene-Coordinator
9 each shall have the authority to halt the performance of the
10 Remedial Action or any other activity at the Site that, in the
11 opinion of the EPA Project Coordinator or On-Scene Coordinator,
12 may present or contribute to an endangerment to public health,
13 welfare, or the environment, or cause or threaten to cause the
14 release of Waste Materials from the Site. The absence of the EPA
15 Project Coordinator from the Site shall not be cause for stoppage
16 of Work.

17 B. EPA and Defendant's Project Coordinators each may assign
18 other site representatives, including other contractors, to serve
19 as a site representative for oversight of daily operations during
20 remedial activities.

21 C. Prior to invoking the formal Dispute Resolution proce-
22 dures contained in Section XXIV (Dispute Resolution), any un-
23 resolved disagreements arising between the EPA site representa-
24 tive and Defendant or its site representative shall be referred
25 to the EPA and Defendant's Project Coordinators.

26 D. The Project Coordinators shall not have the authority
27 to modify the terms of this Consent Decree, including any Appen-
28 dices or any approved design or construction plans.

1 States, EPA and their representatives access at all times to the
2 Site and any other property to which access is required for the
3 implementation of this Consent Decree, to the extent that Defen-
4 dant has acquired access to such property pursuant to Subsection
5 A of this Section XIII or such property is owned or controlled by
6 Defendant.

7 C. Any person obtaining access to the Site pursuant to this
8 provision shall comply with the provisions of the Worker Health
9 and Safety Plan as submitted pursuant to this Consent Decree.

10 D. Notwithstanding any provision of this Consent Decree,
11 the United States retains all of its access authorities and
12 rights under CERCLA, RCRA and any applicable federal statute or
13 authority.

14 XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

15 A. Defendant shall demonstrate its ability to complete the
16 Work and to reimburse EPA for response costs as required by this
17 Consent Decree by obtaining and presenting to EPA for approval
18 within thirty (30) calendar days after EPA notifies Defendant of
19 the entry of this Consent Decree, one of the following items: 1)
20 a performance bond; 2) a letter of credit; or 3) a guarantee by a
21 third party equaling the total estimated cost of the Remedial Ac-
22 tion. In lieu of any of the three items listed above, Defendant
23 may present to EPA, within twenty (20) days after EPA notifies
24 Defendant of the entry of this Consent Decree, internal financial
25 information sufficient to satisfy EPA and 40 C.F.R. Part
26 264.143(f) that Defendant has sufficient assets to make it un-
27 necessary to require additional assurances. If Defendant seeks
28 to demonstrate its ability to complete the Work by means of the

1 financial test or the corporate guarantee, it shall resubmit
2 sworn statements conveying the information required by 40 C.F.R.
3 Part 264.143(f) annually, on the anniversary of the effective
4 date of this Consent Decree. If EPA determines the assurances to
5 be inadequate, Defendant shall obtain one of the three other
6 financial instruments listed above within thirty (30) calendar
7 days after such EPA determination.

8 B. EPA may evaluate the adequacy of the assurance of
9 ability to complete the Work, and, if EPA determines it to be in-
10 adequate, EPA shall communicate that determination to Defendant.
11 If Defendant invokes the dispute resolution provisions of this
12 Consent Decree to resolve any dispute over financial assurances,
13 Defendant shall obtain one of the three financial instruments
14 listed in Subsection XIV.A above, within seven (7) days, pending
15 resolution of the dispute. Defendant's inability to demonstrate,
16 within the time required by this Section XIV, its financial
17 ability to complete the Remedial Action shall not excuse perfor-
18 mance of any activities required under this Consent Decree.

19 XV. EMERGENCY RESPONSE

20 A. In the event of any action or occurrence during the per-
21 formance of the Work which causes or threatens a release of a
22 Waste Material that constitutes an emergency situation or may
23 present an immediate threat to public health or welfare or the
24 environment or in the event that operation of the treatment
25 system(s) stops for more than twenty-four (24) hours for any
26 reason other than routine maintenance, Defendant shall, subject
27 to Subsection B of this Section, immediately take all appropriate
28 action to prevent, abate, or minimize such release or threat of

1 release, and shall immediately notify the EPA Project Coordinator
2 or the EPA On-Scene Coordinator if one has been designated. If
3 neither of these persons is available, Defendant shall notify the
4 Emergency Response Section of EPA Region IX. Defendant shall
5 take such actions in consultation with EPA's Project Coordinator
6 and in accordance with all applicable provisions of the Health
7 and Safety Plans, the Contingency Plans, or any other applicable
8 plans or documents developed pursuant to Section VII (Work to be
9 Performed). In the event Defendant fails to take appropriate
10 response action as required by this Section, and EPA takes such
11 action instead, Defendant shall reimburse EPA for all costs of
12 the response action not inconsistent with the NCP, subject to
13 Section XX.B (Future Response Costs).

14 B. Nothing in the preceding Subsection or in this Consent
15 Decree shall be deemed to limit any authority of the United
16 States to take, direct, or order all appropriate action or to
17 seek an order from the Court to protect human health and the en-
18 vironment or to prevent, abate, or minimize an actual or
19 threatened release of a Waste Material on, at, or from the Site.

20 XVI. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

21 A. All actions required to be taken pursuant to this Con-
22 sent Decree shall be undertaken in accordance with the require-
23 ments of all applicable federal, state and local laws, regula-
24 tions, and applicable permitting requirements.

25 B. Defendant shall obtain all permits or approvals neces-
26 sary under federal, state or local laws and shall submit timely
27 applications and requests for any such permits and approvals.
28 Notwithstanding any other provision in this Consent Decree, and

1 insofar as Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1)
2 governs, no federal, state or local permit shall be required for
3 any Work conducted pursuant to this Consent Decree entirely on-
4 site. Defendant shall, however, comply with all the substantive
5 requirements that any such permit would have required, if issued,
6 and comply with all ARARs specified in the ROD.

7 C. This Consent Decree is not, and shall not be construed
8 to be, a permit issued pursuant to any federal or state statute
9 or regulation.

10 XVII. DATA EXCHANGE: SAMPLING AND ANALYSES

11 A. Upon request, Defendant shall provide EPA with all
12 analytical, technical or design data and information relating to
13 the Remedial Action or the implementation of this Consent Decree
14 and all information Defendant is required to furnish EPA under
15 Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2).

16 B. Notwithstanding this Section XVII, EPA explicitly
17 reserves any and all rights it has under Section 104(e) of
18 CERCLA, 42 U.S.C. § 9604(e). In addition, at the request of EPA,
19 Defendant shall allow split or replicate samples to be taken by
20 EPA and/or its authorized representatives, of any samples col-
21 lected by Defendant or anyone acting on Defendant's behalf pur-
22 suant to the implementation of this Consent Decree. Within seven
23 (7) days after the approval of any sampling plan (including the
24 schedule for implementation), Defendant shall notify EPA of the
25 intended date of commencement of each sampling event. In addi-
26 tion, Defendant shall notify EPA within forty-eight (48) hours
27 prior to any modifications or proposed changes to any sample col-
28 lection activity.

1 C. Defendant shall notify EPA in a timely manner of, and
2 prior to, any project which is likely to produce data or informa-
3 tion of the types described in this Section.

4 D. Defendant may assert business confidentiality claims
5 covering part or all of the documents or information submitted to
6 Plaintiff under this Consent Decree to the extent permitted by
7 and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.
8 § 9604(e)(7), and 40 C.F.R § 2.203(b). Documents or information
9 determined to be confidential by EPA will be afforded the protec-
10 tion specified in 40 C.F.R. Part 2, Subpart B. If no claim of
11 confidentiality accompanies documents or information when they
12 are submitted to EPA, or ten (10) days after EPA has notified
13 Defendant that the documents or information are not confidential
14 under the standards of Section 104(e)(7) of CERCLA, the public
15 may be given access to such documents or information without fur-
16 ther notice to Defendant.

17 E. Defendant may assert that certain documents, records
18 and other information are privileged under the attorney-client
19 privilege or any other privilege recognized by federal law. If
20 Defendant asserts such a privilege, it shall provide the Plain-
21 tiff with the following: (1) the title of the document, record,
22 or information; (2) the date of the document, record or informa-
23 tion; (3) the name and title of the author of the document,
24 record or information; (4) the name and title of each addressee
25 and recipient; (5) a description of the contents of the document,
26 record or information; and (6) the privilege asserted by the
27 Defendant. However, no documents, reports or other information
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1 created or generated pursuant to the requirements of this Consent
2 Decree shall be withheld on the grounds that they are privileged.

3 F. No claim of confidentiality shall be made with respect
4 to any data, including, but not limited to, all sampling,
5 analytical, monitoring, hydrogeologic, scientific, chemical, or
6 engineering data, or any other documents or information evidenc-
7 ing conditions at or around the Site.

8 XVIII. RETENTION OF RECORDS

9 A. Until ten (10) years after Defendant's receipt of EPA's
10 notification pursuant to Subsection B of Section XL
11 (Certification of Completion), Defendant shall preserve and
12 retain all records and documents now in its possession or control
13 or which come into its possession or control that relate in any
14 manner to the performance of the Work or liability of any person
15 for response action conducted and to be conducted at the Site,
16 regardless of any corporate retention policy to the contrary.
17 Until ten (10) years after Defendant's receipt of EPA's notifica-
18 tion pursuant to Subsection B of Section XL (Certification of
19 Completion), Defendant shall also instruct its contractors and
20 agents to preserve all documents, records, and information of
21 whatever kind, nature or description relating to the performance
22 of the Work.

23 B. At the conclusion of this document retention period,
24 Defendant shall notify the United States at least ninety (90)
25 days prior to the destruction of any such records or documents,
26 and, upon request by the United States, Defendant shall deliver
27 any such records or documents to EPA. Defendant may assert that
28 certain documents, records and other information are privileged

1 under attorney-client privilege or any other privilege recognized
2 by federal law. If Defendant asserts such privilege, it shall
3 provide Plaintiff with the following: (1) the title of the docu-
4 ment, record, or information; (2) the date of the document,
5 record or information; (3) the name and title of the author of
6 the document, record or information; (4) the name and title of
7 each addressee and recipient; (5) a description of the contents
8 of the document, record or information; and (6) the privilege as-
9 serted by the Defendant. However, no documents, reports or other
10 information created or generated pursuant to the requirements of
11 the Consent Decree shall be withheld on the grounds that they are
12 privileged.

13 C. Defendant hereby certifies that it has not altered,
14 mutilated, discarded, destroyed or otherwise disposed of any
15 records, documents or other information relating to its potential
16 liability regarding the Site since notification of potential
17 liability by the United States or the State or the filing of suit
18 against it regarding the Site and that it has fully complied with
19 any and all EPA requests for information pursuant to Section
20 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

21 XIX. RESERVATION OF RIGHTS

22 A. Notwithstanding compliance with the terms of this Con-
23 sent Decree, including the completion of the Remedial Action,
24 Defendant is not released from liability for any matters other
25 than those expressly specified to be Covered Matters. Not-
26 withstanding any other provision in this Consent Decree, the
27 Covenant Not to Sue in Section XXVII (Covenant Not To Sue By
28 Plaintiff) shall not relieve Defendant of its obligations to meet

1 and maintain compliance with the requirements set forth in this
2 Consent Decree. Except as provided in Section XXVII (Covenant
3 Not To Sue By Plaintiff), the United States and EPA reserve all
4 rights to take enforcement actions for violations of this Consent
5 Decree and to take any enforcement action pursuant to CERCLA
6 and/or any other authority, including the right to seek response
7 costs, injunctive relief, monetary penalties, and punitive
8 damages for any civil or criminal violation of law or this Con-
9 sent Decree.

10 B. In the event EPA determines that Defendant has failed to
11 implement any provisions of the Work in an adequate or timely
12 manner, or at any other time, EPA may perform any and all por-
13 tions of the Work as EPA determines necessary. Defendant may in-
14 voke the procedures set forth in Section XXIV (Dispute Resolu-
15 tion) to dispute EPA's determination that Defendant failed to
16 implement a provision of the Work in an adequate or timely manner
17 as arbitrary and capricious or otherwise not in accordance with
18 law. Such dispute shall be resolved on the administrative
19 record. Costs incurred by the United States in performing the
20 Work pursuant this Subsection shall be considered Future Response
21 Costs that Defendant shall pay pursuant to Section XX (Future
22 Response Costs).

23 C. Nothing in this Consent Decree shall be deemed to limit
24 the response authority of EPA under Section 104 of CERCLA,
25 42 U.S.C. § 9604, and under Section 106 of CERCLA, 42 U.S.C.
26 § 9606, or under any other federal response authority. Except as
27 provided in Section XXVII (Covenant Not To Sue By Plaintiff), the
28 United States reserves the right to seek reimbursement from

1 Defendant for any costs incurred by the United States in taking
2 any such response.

3 D. Compliance with the terms of this Consent Decree, in-
4 cluding the completion of the approved Remedial Action does not
5 constitute a release of Defendant by United States from any
6 liability beyond Covered Matters.

7 XX. REIMBURSEMENT OF FUTURE RESPONSE COSTS

8 A. Defendant shall reimburse the Hazardous Substance Su-
9 perfund for all Future Response Costs incurred by the United
10 States under or in connection with this Consent Decree. No more
11 frequently than annually, EPA shall submit to Defendant a summary
12 of such Future Response Costs incurred by EPA in the time period
13 since the last demand for payment. EPA's Cost Documentation
14 Management System summary data ("CDMS reports") shall serve as
15 the documentation for payment demands, along with underlying
16 documentation if requested by Defendant. EPA will also provide a
17 summary of its indirect and interest cost calculations as well as
18 a summary of all costs incurred by the United States Department
19 of Justice. Defendant shall, within thirty (30) days of receipt
20 of each demand for payment, remit a check for the amount of those
21 costs made payable to the Hazardous Substance Superfund and
22 referencing CERCLA Number 9PD1 and Department of Justice Case
23 Number 90-11-3-729. Defendant shall mail each payment to:

24 U.S. Environmental Protection Agency
25 Region IX ATTENTION:
26 Superfund Accounting
27 P.O. Box 360863M
Pittsburgh, PA 15251
Attn: Collection Officer for Superfund

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1 A copy of the transmittal letter and a copy of the check shall be
2 sent simultaneously to the United States and the EPA Project
3 Coordinator as provided in Section XXIV (Form of Notice).

4 B. Defendant may contest payment of any Future Response
5 Costs under this Subsection if it determines that the United
6 States has made an accounting error, if it alleges that a cost
7 item that is included represents costs that are inconsistent with
8 the NCP, or if it alleges that a cost item is not within the
9 definition of Future Response Costs pursuant to Section IV.M
10 (Definitions). Such objection shall be made in writing within
11 thirty (30) days of receipt of the bill and must be sent to the
12 United States pursuant to Section XXV (Form of Notice). Any such
13 objection shall specifically identify the contested Future
14 Response Costs and the basis for objection. In the event of an
15 objection, Defendant shall within the thirty (30) day period pay
16 all uncontested Future Response Costs to the United States in the
17 manner described in Subsection A of this Section. Simul-
18 taneously, Defendant shall establish an interest bearing escrow
19 account in a bank duly chartered in the State of California and
20 remit to that escrow account funds equivalent to the amount of
21 the contested Future Response Costs. Defendant shall send to the
22 United States, as provided in Section XXV (Form of Notice), a
23 copy of the transmittal letter and check paying the uncontested
24 Future Response Costs, and a copy of the correspondence that es-
25 tablishes and funds the escrow account, including, but not
26 limited to, information containing the identity of the bank and
27 bank account under which the escrow account is established as
28 well as a bank statement showing the initial balance of the

1 escrow account. Simultaneously with establishment of the escrow
2 account, Defendant shall initiate the Dispute Resolution proce-
3 dures in Section XXIV (Dispute Resolution). If the United States
4 prevails in the dispute, within 5 days of the resolution of the
5 dispute, Defendant shall direct the escrow holder to remit the
6 escrowed monies (with accrued interest) to the United States in
7 the manner described in Subsection A of this Section. If Defen-
8 dant prevails concerning any aspect of the contested costs,
9 Defendant shall direct the escrow holder to remit payment for
10 that portion of the costs (plus associated accrued interest) for
11 which it did not prevail to the United States in the manner
12 described in Subsection A of this Section; Defendant shall be
13 disbursed the balance of the escrow account. The dispute resolu-
14 tion procedures set forth in Section XXIV (Dispute Resolution)
15 shall be the exclusive mechanism for resolving disputes regarding
16 Defendant's obligation to reimburse the United States for its Fu-
17 ture Response Costs.

18 C. In the event that the payments required by Subsection A
19 of this Section are not made within thirty (30) days of the
20 Defendant's receipt of the bill, Defendant shall pay interest on
21 the unpaid balance at the rate established pursuant to Section
22 107(a) of CERCLA, 42 U.S.C. § 9607. The interest on Future
23 Response Costs shall begin to accrue thirty (30) days after
24 Defendant's receipt of the bill. Payments made under this Sub-
25 section shall be in addition to such other remedies or sanctions
26 available to Plaintiff by virtue of Defendant's failure to make
27 timely payment under this Section.

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1 XXI. REIMBURSEMENT OF PAST RESPONSE COSTS

2 A. Defendant agrees to reimburse the Hazardous Substance
3 Superfund \$150,000.00 in full satisfaction of Past Response
4 Costs. Defendant shall, within thirty (30) calendar days after
5 EPA notifies Defendant of the entry of this Consent Decree, remit
6 a check in the amount of \$150,000.00 referencing the CERCLA Num-
7 ber 9PD1 and Department of Justice Case Number 90-11-3-729.
8 Defendant shall mail the check for that amount to the address
9 listed in Section XX (Reimbursement of Future Response Costs). A
10 copy of the transmittal letter and a copy of the check shall be
11 sent to the EPA Project Coordinator.

12 B. In the event that the payment required by Subsection A
13 of this Section is not made within thirty (30) days after EPA
14 notifies Defendant of the entry of this Consent Decree, Defendant
15 shall pay interest on the unpaid balance at the rate established
16 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The in-
17 terest on Past Response Costs shall begin to accrue thirty (30)
18 days after EPA notifies Defendant of the entry of this Consent
19 Decree. Payments made under this Subsection shall be in addition
20 to such other remedies or sanctions available to Plaintiff by
21 virtue of Defendant's failure to make timely payment under this
22 Section.

23 C. Upon notification of Defendant to EPA that the Califor-
24 nia Department of Health Services has billed Defendant for
25 response costs incurred by the Hazardous Substance Superfund and
26 not by the California Hazardous Substances Account, EPA will, as
27 it deems appropriate, and consistent with its legal authorities
28 and enforcement priorities, use reasonable efforts to assure

1 proper cost accounting and billing occurs for the Site. Nothing
2 in this Subsection C shall in any way alter the obligation of
3 Defendant to comply with the terms of this Consent Decree.

4 XXII. STIPULATED PENALTIES

5 A. Defendant shall be liable for stipulated penalties to
6 the United States in the amounts set forth in Subsection B for
7 failure to comply with the requirements of this Consent Decree,
8 unless excused under Section XXIII (Force Majeure). "Compliance"
9 by Defendant shall include performance and completion of the Work
10 in accordance with all applicable requirements of law, this Con-
11 sent Decree and any plans or other documents approved by EPA pur-
12 suant to this Consent Decree and within the specified time
13 schedules established by and approved under this Consent Decree.

14 B. The following stipulated penalties shall be payable per
15 violation per day to the United States for any noncompliance, in-
16 cluding but not limited to, failure to submit timely or adequate
17 reports or other written documents pursuant to Section VII (Work
18 To Be Performed):

19 1. Class I Requirements:

20 For the submission of an inadequate or late Progress Report:
21 \$750 per day.

22 2. Class II Requirements:

23 For the submission of late or substantially inadequate draft
24 deliverables or late or inadequate final deliverables other than
25 the deliverables described under Subsections B(1) or B(3), or for
26 any other failure to comply with the requirements of this Consent
27 Decree:

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1	Period of	Penalty Per
2	<u>Failure to Comply</u>	<u>Violation Per Day</u>
3	1st through 14th day	\$3,000
4	15th through 30th day	\$7,000
5	31st day and beyond	\$13,000

6 3. Class III Requirements:

7 For the submission of a late or substantially inadequate
8 draft Remedial Design Plan or draft Remedial Action Plan or late
9 or inadequate final Remedial Design Plan or final Remedial Action
10 Plan:

11	Period of	Penalty Per
12	<u>Failure to Comply</u>	<u>Violation Per Day</u>
13	1st through 14th day	\$6,000
14	15th through 30th day	\$14,000
15	31st day and beyond	\$20,000

16 C. In the event that EPA assumes performance of a portion
17 or all of the Work pursuant to Subsection B of Section XIX
18 (Reservation of Rights), it shall promptly give Defendant notice
19 thereof, and Defendant shall be liable for a stipulated penalty
20 in the amount of \$500,000. In that event, Defendant shall not be
21 liable for stipulated penalties pursuant to Subsection B for the
22 period beginning with the date of notification by EPA of its in-
23 tent to assume performance of the Work.

24 D. All penalties shall begin to accrue on the day after
25 the complete performance is due or the day a violation occurs,
26 and shall continue to accrue through the final day of the correc-
27 tion of the noncompliance. Nothing herein shall prevent the
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1 simultaneous accrual of separate penalties for separate viola-
2 tions of this Consent Decree.

3 E. Following EPA's determination that Defendant has failed
4 to comply with a requirement of this Consent Decree, EPA shall
5 give Defendant written notification of the same and describe the
6 noncompliance. This notice shall also indicate the amount of
7 penalties due and whether the penalties are continuing to accrue.
8 However, penalties shall accrue as provided in the preceding Sub-
9 section regardless of whether EPA has notified Defendant of a
10 violation.

11 F. All penalties owed to the United States under this Sec-
12 tion XXII shall be due and payable within thirty (30) days of
13 Defendant's receipt from EPA of a notification of noncompliance.
14 All payments under this Section XXII shall be paid by certified
15 check made payable to "EPA Hazardous Substance Superfund," shall
16 be mailed to the address listed in Section XX (Reimbursement of
17 Future Response Costs), and shall reference CERCLA Number 9PD1
18 and Department of Justice Case Number 90-11-3-729. Copies of
19 check(s) paid pursuant to this Section, and any accompanying
20 transmittal letter(s), shall be sent to the United States and to
21 the EPA Project Coordinator.

22 G. Defendant may invoke the dispute resolution procedures
23 set forth in Section XXIV (Dispute Resolution) in any case that
24 results in stipulated penalties based on a determination of
25 Defendant's failure to comply with the requirements of this Con-
26 sent Decree. Defendant may not invoke Dispute Resolution with
27 respect to a determination of late deliverable(s) or Work.

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1 H. In any dispute regarding the imposition of stipulated
2 penalties under this Section XXII, the subject matter of the non-
3 compliance, and not the imposition of stipulated penalties, shall
4 provide the basis for deciding whether the dispute shall be
5 resolved pursuant to Section XXIV.D or XXIV.E (Dispute
6 Resolution).

7 I. Neither the invocation of dispute resolution procedures
8 under Section XXIV (Dispute Resolution) nor the payment of
9 penalties shall alter in any way Defendant's obligation to com-
10 plete the performance of the Work required under this Consent
11 Decree.

12 J. Penalties shall continue to accrue as provided in this
13 Section XXII during any dispute resolution period, but need not
14 be paid until the following:

15 1. If the dispute is resolved by agreement or by
16 decision or order of EPA which is not appealed to this Court, ac-
17 crued penalties shall be paid to EPA within fifteen (15) days of
18 the agreement or receipt of EPA's decision or order;

19 2. If the dispute is appealed to this Court and the
20 United States prevails in whole or in part, Defendant shall pay
21 all accrued penalties that the Court determines are owed to EPA
22 within sixty (60) days of receipt of the Court's decision or or-
23 der, except as provided in Subsection 3 below;

24 3. If the District Court's decision is appealed by
25 any Party, Defendant shall pay all accrued penalties owed to EPA
26 into an interest-bearing escrow account within sixty (60) days of
27 receipt of the Court's decision or order. Penalties shall be
28 paid into this account as they continue to accrue, at least every

1 sixty (60) days. Within sixty (60) days of receipt of the appel-
2 late court decision, the escrow agent shall distribute the funds
3 in the account to EPA or to Defendant to the extent that each
4 prevails.

5 K. If Defendant fails to pay stipulated penalties when
6 due, the United States may institute proceedings to collect the
7 penalties, as well as late charges and interest. Defendant shall
8 pay interest on the unpaid balance, which shall begin to accrue
9 at the end of the thirty-day period specified in Subsection F of
10 this Section XXII at the rate established by the Department of
11 the Treasury under 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.
12 Defendant shall further pay a handling charge of 1 percent (1%),
13 to be assessed at the end of each thirty-day late period, and a
14 six percent (6%) per annum penalty charge, to be assessed if the
15 penalty is not paid in full within ninety (90) days after it is
16 due. However, nothing in this Section XXII shall be construed as
17 prohibiting, altering, or in any way limiting the ability of the
18 United States to seek any other remedies or sanctions available
19 by virtue of Defendant's violation of this Consent Decree or of
20 the statutes and regulations upon which it is based, including,
21 but not limited to, penalties pursuant to Section 122(1) of
22 CERCLA, 42 U.S.C. § 9622(1), provided that the total of any
23 penalties shall not exceed \$25,000 per day per violation. In no
24 event shall this limitation be construed to restrict the amount
25 of the Work performance assumption penalty provided in Subsection
26 C of this Section XXII.

27 L. No payments made under this Section XXII shall be tax
28 deductible for Federal tax purposes.

1 XXIII. FORCE MAJEURE

2 A. "Force Majeure," for purposes of this Consent Decree,
3 is defined as any event arising from causes beyond the control of
4 Defendant or of any entity controlled by Defendant, including,
5 but not limited to, their contractors and subcontractors, that
6 delays or prevents the performance of any obligation under this
7 Consent Decree despite Defendant's best efforts to fulfill the
8 obligations. The requirement that Defendant exercise "best ef-
9 forts to fulfill the obligation" includes using best efforts to
10 anticipate and address the effects of any potential force majeure
11 event both as it is occurring and following it, such that the
12 delay is minimized to the greatest extent possible. "Force
13 Majeure" does not include the financial inability of Defendant to
14 complete the Work.

15 B. If any event occurs or has occurred that may delay the
16 performance of any obligation under this Consent Decree, whether
17 or not caused by a force majeure event, Defendant shall notify by
18 telephone EPA's Project Coordinator or, in his or her absence,
19 the Director of the Hazardous Waste Management Division, EPA
20 Region IX, or his/her designee within forty-eight (48) hours of
21 when Defendant first knew or should have known that the event
22 might cause a delay. Within five (5) working days thereafter,
23 Defendant shall provide in writing to EPA the reasons for the
24 delay; the anticipated duration of the delay; all actions taken
25 or to be taken to prevent or minimize the delay; a schedule for
26 implementation of any measures to be taken to prevent or mitigate
27 the delay or effect of the delay; Defendant's rationale for at-
28 tributing such delay to a force majeure event if it intends to

1 assert such a claim; and a statement as to whether, in the
2 opinion of the Defendant, such event may cause or contribute to
3 an endangerment to public health, welfare or the environment.
4 Defendant shall include with any notice all available documenta-
5 tion supporting its claim that the delay was attributable to a
6 force majeure event. Failure to comply with the above require-
7 ments shall preclude Defendant from asserting any claim of force
8 majeure. Defendant shall be deemed to have notice of any cir-
9 cumstance following a reasonable period of time after the con-
10 tractors or subcontractors first had or should have had notice.

11 C. If EPA agrees that the delay or anticipated delay is
12 attributable to a force majeure event, the time for performance
13 of the obligations under this Consent Decree that are affected by
14 the force majeure event shall be extended by written agreement of
15 EPA and Defendant for such time as is necessary to complete those
16 obligations. An extension of the time for performance of the
17 obligations affected by the force majeure event shall not, of it-
18 self, extend the time for performance of any subsequent obliga-
19 tion.

20 D. If EPA does not agree that the delay or anticipated
21 delay has been or will be caused by a force majeure event, or if
22 EPA and Defendant do not agree on the length of the extension for
23 performance of the obligations affected by a force majeure event,
24 EPA shall notify Defendant in writing of its decision concerning
25 whether the delay is attributable to a force majeure event or the
26 length of the extension for performance of the obligations af-
27 fected by a force majeure event.

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1 E. If Defendant elects to invoke the dispute resolution
2 procedures set forth in Section XXIV (Dispute Resolution), it
3 shall do so no later than fifteen (15) days after receipt of
4 EPA's notice. In any such proceeding, Defendant shall have the
5 burden of demonstrating by a preponderance of the evidence that
6 the delay or anticipated delay has been or will be caused by a
7 force majeure event, that the duration of the delay was or will
8 be warranted under the circumstances, that best efforts were ex-
9 ercised to avoid and mitigate the effects of the delay, and that
10 Defendant complied with the requirements of Subsections A and B,
11 above. If Defendant carries this burden, the delay at issue
12 shall be deemed not to be a violation by Defendant of the af-
13 fected obligation of this Consent Decree identified to EPA and
14 the Court.

15 XXIV. DISPUTE RESOLUTION

16 A. Unless otherwise expressly provided for in this Consent
17 Decree, the dispute resolution procedures of this Section XXIV
18 shall be available and shall be the exclusive mechanism to
19 resolve any dispute arising under or with respect to this Consent
20 Decree. However, the procedures set forth in this Section shall
21 not apply to actions by the United States to enforce obligations
22 of the Defendant that have not been disputed in accordance with
23 this Section XXIV. The Parties have agreed to specify in this
24 Consent Decree certain disputes that would receive review under
25 Subsection D of this Section. Where Subsection D has not been
26 specified, each Party reserves the right to argue whether
27 specific disputes shall be resolved pursuant to Subsection D or
28 E, below.

1 B. Any dispute which arises under or with respect to this
2 Consent Decree shall in the first instance be the subject of in-
3 formal negotiations between the Parties. The period for informal
4 negotiations shall not exceed twenty (20) days from the time the
5 dispute arises, unless it is extended by written agreement of the
6 Parties. The dispute shall be considered to have arisen when one
7 party notifies the other party in writing that there is a dis-
8 pute.

9 C. In the event that the Parties cannot resolve a dispute
10 by informal negotiations under the preceding Subsection, then EPA
11 shall notify Defendant of its position in writing and EPA's posi-
12 tion shall be considered binding unless, within ten (10) days
13 after the receipt of such notification, Defendant invokes the
14 formal dispute resolution procedures of this Section XXIV by
15 serving on the United States a written statement of position on
16 the matter in dispute, including, but not limited to, any data,
17 analysis or opinion supporting that position and any documenta-
18 tion relied upon by Defendant.

19 D. In proceedings on any dispute relating to the selec-
20 tion, technique, cost effectiveness or adequacy of any aspect of
21 the Work and in any other dispute subject to CERCLA Section
22 113(j)(2), 42 U.S.C. § 9613(j)(2), in considering the Defendant's
23 objections, the Court shall uphold EPA's decision unless Defen-
24 dant can demonstrate, on the administrative record, that EPA's
25 decision was arbitrary and capricious or otherwise not in accor-
26 dance with law. Nothing herein shall be construed to allow any
27 dispute by Defendant regarding the validity of the ROD's provi-
28 sions.

1 1. The administrative record of the dispute shall be
2 maintained by EPA and shall contain all statements of position,
3 including supporting documentation, submitted pursuant to this
4 Subsection and Subsection C above.

5 2. Within fourteen (14) days after receipt of
6 Defendant's statement of position submitted pursuant to Subsec-
7 tion C above, EPA shall serve on Defendant its statement of posi-
8 tion, including, but not limited to, any factual data, analysis,
9 or opinion supporting that position and all supporting documenta-
10 tion relied upon by EPA, in response to Defendant's statement of
11 position. Where appropriate, EPA may allow submission of sup-
12 plemental statements of position by Defendant.

13 3. The Director of the Hazardous Waste Management
14 Division, EPA Region IX, shall issue a final administrative deci-
15 sion resolving the dispute which shall be based on the Ad-
16 ministrative Record. This decision shall be binding upon Defen-
17 dant, subject only to the right to seek judicial review pursuant
18 to Subsections D(4) and D(5), below.

19 4. Any administrative decision by EPA pursuant to
20 Subsection D(3) above shall be reviewable by this Court, provided
21 that an appropriate motion is filed by Defendant with the Court
22 and served on the United States within ten (10) days of receipt
23 of EPA's decision. The motion shall include a description of the
24 matter in dispute, the efforts made by the Parties to resolve it,
25 the relief requested, and the schedule, if any, within which the
26 dispute must be resolved to ensure orderly implementation of this
27 Consent Decree. The motion shall be served on the United States
28 prior to or contemporaneously with the filing of the motion with

1 the Court. The United States may file an opposition to the mo-
2 tion, and Defendant may file a reply, in accordance with the
3 rules of this Court.

4 5. Defendant shall have the burden of demonstrating
5 to the Court that the decision of the Hazardous Waste Management
6 Division Director is arbitrary and capricious or otherwise not in
7 accordance with law. Judicial review of EPA's decision shall be
8 on the administrative record compiled pursuant to Subsections
9 D(1) and D(2), above, and otherwise applicable principles of ad-
10 ministrative law.

11 E. Only those disputes not covered by Subsection D shall
12 be governed by this Subsection E.

13 1. Following receipt of Defendant's statement of
14 position submitted pursuant to Subsection C above, the Hazardous
15 Waste Management Division Director shall issue a final decision
16 resolving the dispute. The Hazardous Waste Management Division
17 Director's decision shall be binding on Defendant unless, within
18 ten (10) days of receipt of the decision, Defendant files with
19 the Court and serves on the United States a motion setting forth
20 the matter in dispute, the efforts made by the Parties to resolve
21 it, the relief requested, and the schedule, if any, within which
22 the dispute must be resolved to ensure orderly implementation of
23 this Consent Decree. The motion shall be served on the United
24 States prior to or contemporaneously with the filing of the mo-
25 tion with the Court. The United States may file an opposition to
26 Defendant's motion, and Defendant may file a reply, in accordance
27 with the rules of this Court.

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1 As to Defendant:

2 Treasurer
3 Watkins-Johnson Company
4 3333 Hillview Avenue
5 Palo Alto, CA 94304

6 XXVI. MODIFICATION

7 No modification shall be made to this Consent Decree without
8 written notification to and written approval of the United
9 States, Defendant and the Court; provided, however, that
10 modifications that do not materially alter the requirements of
11 this Consent Decree and any modifications of the Work Plan may be
12 made upon the written consent of the Parties. The notification
13 required by this Section shall set forth the nature of and
14 reasons for the requested modification. No oral modification of
15 this Consent Decree shall be effective. Nothing in this Section
16 shall be deemed to alter the Court's power to supervise or modify
17 this Consent Decree or to limit EPA's authority to modify the ROD
18 in accordance with CERCLA and the NCP.

19 XXVII. COVENANT NOT TO SUE BY PLAINTIFF

20 A. Subject to Section XVIII (Reservation of Rights), the
21 United States covenants not to sue Defendant, under Sections 106
22 or 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), for Covered Mat-
23 ters. With respect to such liability of Defendant for Covered
24 Matters, except for liability after completion of the Remedial
25 Action, this covenant not to sue is conditioned upon the receipt
26 by EPA of the payments required by Sections XX (Reimbursement of
27 Future Response Costs) and XXI (Reimbursement of Past Response
28 Costs). With respect to liability of Defendant after completion
29 of the Remedial Action, this covenant not to sue is conditioned
30 upon certification of completion of the Remedial Action pursuant

1 to Section XL (Certification of Completion). This covenant not
2 to sue is conditioned upon complete and satisfactory performance
3 by Defendant of its obligations under this Consent Decree. This
4 covenant not to sue extends only to Defendant and does not extend
5 to any other person.

6 B. United States' Pre-certification Reservations. Not-
7 withstanding any other provision of this Consent Decree, the
8 United States reserves, and this Consent Decree is without
9 prejudice to, the right to institute proceedings in this action
10 or in a new action, or to issue an administrative order seeking
11 to compel the Defendant (1) to perform further response actions
12 relating to the Site or (2) to reimburse the United States for
13 additional costs of response if, prior to certification of
14 completion of the Remedial Action:

15 (i) conditions at the Site, previously unknown to the
16 United States, are discovered after the entry of
17 this Consent Decree, or
18 (ii) information is received, in whole or in part,
19 after the entry of this Consent Decree,
20 and these previously unknown conditions or this information
21 together with any other relevant information indicate that the
22 Remedial Action is not protective of human health or the environ-
23 ment.

24 C. United States' Post-certification Reservations. Not-
25 withstanding any other provision of this Consent Decree, the
26 United States reserves, and this Consent Decree is without
27 prejudice to, the right to institute proceedings in this action
28 or in a new action, or to issue an administrative order seeking

1 to compel the Defendant (1) to perform further response actions
2 relating to the Site or (2) to reimburse the United States for
3 additional costs of response if, subsequent to certification of
4 completion of the Remedial Action:

5 (i) conditions at the Site, previously unknown to the
6 United States, are discovered after the certifica-
7 tion of completion, or

8 (ii) information is received, in whole or in part,
9 after the certification of completion,

10 and these previously unknown conditions or this information
11 together with any other relevant information indicate that the
12 Remedial Action is not protective of human health or the environ-
13 ment.

14 D. Notwithstanding any other provision in this Consent
15 Decree, this covenant not to sue shall not relieve Defendant of
16 its obligation to meet and maintain compliance with the require-
17 ments set forth in this Consent Decree, specifically including
18 implementing the remedy set forth in the ROD, which is incor-
19 porated herein. The United States reserves all its rights to
20 take response actions at the Site, including the right to take
21 response action in the event of a violation of the terms of this
22 Consent Decree and to seek recovery of all related Response Costs
23 and all other costs resulting from such violation.

24 E. The covenant not to sue set forth in Subsection A of
25 this Section shall not apply to any matter not expressly ad-
26 dressed by this Consent Decree, including the following claims
27 which are not Covered Matters:

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- 1 1. Claims based on a failure by Defendant to meet the
2 requirements of this Consent Decree;
- 3 2. Claims of the United States for any other costs or
4 actions necessary at the Site which are not expressly and ex-
5 clusively undertaken pursuant to the terms of this Consent
6 Decree;
- 7 3. Liability arising from the past, present, or fu-
8 ture disposal, release, or threat of release of Waste Materials
9 outside of the Site;
- 10 4. Claims for damage to federal property located any
11 place that the Remedial Action is being performed;
- 12 5. Claims based on criminal liability;
- 13 6. Liability for damages for injury to, destruction
14 of, or loss of natural resources;
- 15 7. Liability for response costs that have been or may
16 be incurred by the Department of the Interior;
- 17 8. Claims based on liability for Waste Materials
18 removed from the Site;
- 19 9. Claims based on liability for future monitoring or
20 oversight expenses incurred by the United States except as those
21 expenses are recovered by the United States pursuant to Section
22 XX ("Reimbursement of Future Response Costs"); or
- 23 10. Claims based on liability for any violations of
24 Federal or State law which occur during or after implementation
25 of the Remedial Action.
- 26 F. Nothing in this Consent Decree shall constitute or be
27 construed as a release or covenant not to sue regarding any claim
28 or cause of action against any person as defined in Section

1 101(21) of CERCLA, 42 U.S.C. § 9601(21) or other entity not a
2 signatory to or bound by this Consent Decree.

3 XXVIII. COVENANT NOT TO SUE BY DEFENDANT

4 A. Defendant hereby covenants not to sue and agrees not to
5 assert any claims or causes of action against the United States
6 with respect to the Site or this Consent Decree, including, but
7 not limited to, any direct or indirect claim for reimbursement
8 from the Hazardous Substance Superfund (established pursuant to
9 the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sec-
10 tions 106(b)(2), 111 or 112 or any other provision of law or any
11 claims arising out of response activities at the Site. However,
12 Defendant reserves, and this Consent Decree is without prejudice
13 to, actions against the United States based on negligent action
14 taken directly by the United States (not including oversight or
15 approval of the Defendant's plans or activities) that are brought
16 pursuant to any statute other than CERCLA and for which the
17 waiver of sovereign immunity is found in a statute other than
18 CERCLA. Nothing in this Consent Decree shall be deemed to con-
19 stitute preauthorization of a claim within the meaning of Section
20 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

21 B. In any subsequent administrative or judicial proceeding
22 initiated by the United States for injunctive relief, recovery of
23 response costs, or other appropriate relief relating to the Site,
24 Defendant shall not assert, and may not maintain, any defense or
25 claim based upon the principles of waiver, res judicata, col-
26 lateral estoppel, issue preclusion, claim-splitting, or other
27 defenses based upon any contention that the claims raised by the
28 United States in the subsequent proceeding should have been

1 brought in the instant case; provided, however, that nothing in
2 this Subsection affects the enforceability of the covenants not
3 to sue set forth in Section XXVII (Covenant Not To Sue By
4 Plaintiff).

5 XXIX. COMMUNITY RELATIONS

6 Defendant shall prepare and submit to EPA a Community Rela-
7 tions Plan describing the activities the Defendant will undertake
8 to disseminate information regarding the Remedial Action to the
9 public. Upon its approval by EPA, Defendant shall implement the
10 plan. Defendant shall also cooperate with EPA in providing in-
11 formation regarding the Remedial Action to the public. As re-
12 quested by EPA, Defendant shall participate in the preparation of
13 such information for dissemination to the public and in public
14 meetings which may be held or sponsored by EPA to explain ac-
15 tivities at or relating to the Site.

16 XXX. LODGING AND PUBLIC PARTICIPATION

17 A. This Consent Decree shall be lodged with the Court for
18 a period of not less than thirty (30) days for public notice and
19 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
20 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves
21 the right to withdraw or withhold its consent if the comments
22 regarding the Consent Decree disclose facts or considerations
23 which indicate that the Consent Decree is inappropriate, improper
24 or inadequate.

25 B. Defendant hereby agrees not to oppose entry of this
26 Consent Decree by the Court or challenge any provision of this
27 Consent Decree unless the United States has notified the Defen-
28 dant in writing that it no longer supports entry of the Consent

1 Decree, or unless the Court modifies or the United States seeks
2 modification of the Consent Decree as lodged.

3 XXXI. STATE AGENCY PARTICIPATION

4 Defendant shall send copies of the deliverables in this Con-
5 sent Decree to the State agency representatives designated by EPA
6 for review, as listed below. EPA will provide Defendant a cur-
7 rent mailing list for these representatives. State agency repre-
8 sentatives shall be given the opportunity to review the
9 deliverables. After the State agency representatives have had
10 the opportunity to review the deliverables, they shall have the
11 opportunity to meet with EPA to discuss the deliverables and
12 prepare collaborative comments. These collaborative comments
13 shall be submitted to Defendant as EPA comments. Defendant shall
14 revise the deliverables according to the EPA comments as is re-
15 quired by the terms of Section VII (Work To Be Performed) of this
16 Consent Decree. The State contacts are:

17 Project Manager
18 California Department of Health Services
19 2151 Berkeley Way, Annex 9
20 Berkeley, CA 94710

21 Project Manager
22 California Regional Water Quality Control Board,
23 Central Coast Region
24 1102 A Laurel Lane
25 San Luis Obispo, CA 93401

26 XXXII. NOTICE TO THE STATE

27 EPA has notified the State of California pursuant to the re-
28 quirements of Sections 106(a) and 121(f)(1)(F) of CERCLA, 42
U.S.C. §§ 9606(a) and 9621(f)(1)(F).

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1 XXXIII. CONSISTENCY WITH THE NCP

2 The United States and Defendant agree that the Remedial Ac-
3 tion, if performed in full accordance with the requirements of
4 this Consent Decree, is consistent with the provisions of the Na-
5 tional Oil and Hazardous Substances Pollution Contingency Plan,
6 40 C.F.R. Part 300.

7 XXXIV. INDEMNIFICATION AND INSURANCE

8 A. Notwithstanding any approvals which may be granted by
9 the United States or other government entities, Defendant shall
10 indemnify the United States and save and hold the United States
11 Government, its officials, agents, employees, contractors, sub-
12 contractors, representatives, agencies or departments harmless
13 for or from any and all claims or causes of action arising from
14 or on account of acts or omissions of Defendant, its officers,
15 directors, employees, agents, receivers, trustees, successors,
16 assigns, contractors, subcontractors, or any other person acting
17 on its behalf or under its control in carrying out activities
18 pursuant to this Consent Decree. Further, Defendant agrees to
19 pay the United States all costs it incurs including, but not
20 limited to, attorneys fees and other expenses of litigation and
21 settlement arising from, or on account of, claims made against
22 the United States based on acts or omissions of Defendant, its
23 officers, directors, employees, agents, contractors, subcontrac-
24 tors, and any persons acting on their behalf or under their con-
25 trol, in carrying out activities pursuant to this Consent Decree.
26 The United States is not, and shall not be held out as, a party
27 to any contract entered into by or on behalf of Defendant in car-
28 rying out activities pursuant to this Consent Decree. Neither

1 Defendant nor any such contractor shall be considered an agent of
2 the United States.

3 B. The indemnifications provided in Subsection A of this
4 Section XXXIV do not include an obligation to defend the United
5 States or persons acting on its behalf in any action relating to
6 this Consent Decree or the Work and do not extend to that portion
7 of any claim or cause of action attributable to the negligent,
8 wanton or willful acts or omissions of the United States, its
9 contractors, subcontractors or any other person or entity acting
10 on its behalf in carrying out activities at or related to the
11 Site.

12 C. Defendant waives all claims against the United States
13 for damages or reimbursement or for set-off of any payments made
14 or to be made to the United States, arising from or on account of
15 any contract, agreement, or arrangement between Defendant and any
16 person for performance of Work on or relating to the Site, in-
17 cluding, but not limited to, claims on account of construction
18 delays. In addition, Defendant shall indemnify and hold harmless
19 the United States with respect to any and all claims for damages
20 or reimbursement arising from or on account of any contract,
21 agreement, or arrangement between Defendant and any person for
22 performance of Work on or relating to the Site, including, but
23 not limited to, claims on account of construction delays.

24 D. Prior to commencing any on-site Work, Defendant shall
25 secure and shall maintain for the duration of this Consent Decree
26 the following insurance covering claims arising out of activities
27 or events related to this Consent Decree or the Site: (1) com-
28 prehensive general liability and automobile insurance with limits

1 of ten million dollars, combined single limit, naming the United
2 States as an additional insured; (2) professional liability in-
3 surance with limits of at least one million dollars per occur-
4 rence; and (3) employer's liability insurance with limits of at
5 least one million dollars per occurrence. Defendant may self-
6 insure with respect to these matters if EPA agrees. In addition,
7 for the duration of this Consent Decree, Defendant shall satisfy,
8 or shall ensure that their contractors or subcontractors satisfy,
9 all applicable laws and regulations regarding the provision of
10 worker's compensation insurance for all persons performing Work
11 on behalf of Defendant in furtherance of this Consent Decree.
12 Prior to commencement of Work under this Consent Decree, and an-
13 nually thereafter, Defendant shall provide to EPA certificates of
14 such insurance and a copy of each insurance policy. If Defendant
15 demonstrates by evidence satisfactory to EPA that any contractor
16 or subcontractor maintains insurance equivalent to that described
17 above, or insurance covering the same risks but in a lesser
18 amount, then with respect to that contractor or subcontractor
19 Defendant need prove only that portion of the insurance described
20 above which is not maintained by the contractor or subcontractor.

21 XXXV. OTHER CLAIMS

22 Nothing in this Consent Decree shall be deemed to constitute
23 a preauthorization of a CERCLA claim within the meaning of Sec-
24 tions 111 or 112 of CERCLA, 42 U.S.C. §§ 9611, 9612, or 40 C.F.R.
25 § 300.25(d). In consideration of the entry of this Consent
26 Decree, Defendant agrees not to make any claims pursuant to Sec-
27 tion 112 or Section 106(b)(2), 42 U.S.C. §§ 9612, 9606(b)(2), or
28 any other provision of law directly or indirectly against the

1 Hazardous Substance Superfund, or make other claims against the
2 United States for those costs expended in connection with this
3 Consent Decree.

4 XXXVI. CONTINUING JURISDICTION

5 The Court specifically retains jurisdiction over both the
6 subject matter of and the Parties to this action for the duration
7 of this Consent Decree for the purposes of issuing such further
8 orders or directions as may be necessary or appropriate to con-
9 strue, implement, modify, enforce or terminate or reinstate the
10 terms of this Consent Decree or for any further relief as the in-
11 terest of justice may require, and applicable principles of law
12 may permit.

13 XXXVII. REPRESENTATIVE AUTHORITY

14 A. The undersigned representative of Defendant certifies
15 that he or she is fully authorized by Defendant to enter into and
16 execute the terms and conditions of this Consent Decree, and to
17 legally bind Defendant to this Consent Decree.

18 B. Defendant shall identify, on the attached signature
19 page, the name and address of an agent who is authorized to ac-
20 cept service of process by mail on behalf of Defendant with
21 respect to all matters arising under or relating to this Consent
22 Decree. Defendant hereby agrees to accept service in that manner
23 and to waive the formal service requirements set forth in Rule 4
24 of the Federal Rules of Civil Procedure, including service of a
25 summons, and any applicable local rules of this Court.

26 XXXVIII. EFFECTIVE DATE

27 This Consent Decree is effective upon the date of entry by
28 the Court.

1 XXXIX. SEVERABILITY

2 If any provision or authority of this Consent Decree or the
3 application of this Consent Decree to any circumstance is held by
4 the Court to be invalid, the application of such provision to
5 other circumstances and the remainder of the Consent Decree shall
6 remain in force and shall not be affected thereby.

7 XL. CERTIFICATION OF COMPLETION

8 A. Completion of the Remedial Action

9 1. Within 90 days after Defendant concludes that the
10 Remedial Action has been fully performed and the Clean-up Stan-
11 dards have been attained, Defendant shall so certify to the
12 United States and shall schedule and conduct a pre-certification
13 inspection to be attended by Defendant and EPA. If, after the
14 pre-certification inspection, Defendant still believes that the
15 Remedial Action has been fully performed and the Clean-up Stan-
16 dards have been attained, it shall submit a written report to EPA
17 for approval within 30 days of the inspection. In the report, a
18 registered professional engineer and the Defendant's Project
19 Coordinator shall certify that the Remedial Action has been com-
20 pleted in full satisfaction of the requirements of this Consent
21 Decree. The written report shall include as-built drawings
22 signed and stamped by a professional engineer. The report shall
23 contain the following statement, signed by a responsible cor-
24 porate official of Defendant or Defendant's Project Coordinator:
25 "I certify that the information contained in or accompanying this
26 submission is true, accurate and complete." If, after completion
27 of the pre-certification inspection and receipt of the written
28 report, EPA, after reasonable opportunity to review and comment

1 by the State, determines that the Remedial Action or any portion
2 thereof has not been completed in accordance with this Consent
3 Decree or that the Clean-up Standards have not been achieved, EPA
4 will notify Defendant in writing of the activities that must be
5 undertaken to complete the Remedial Action and achieve the
6 Clean-up Standards. EPA will set forth in the notice a schedule
7 for performance of such activities consistent with the Consent
8 Decree and Section VII (Work To Be Performed) or require Defen-
9 dant to submit a schedule to EPA for approval. Defendant shall
10 perform all activities described in the notice in accordance with
11 the specifications and schedules established pursuant to this
12 Subsection, subject to its right to invoke dispute resolution
13 procedures set forth in Section XXIV (Dispute Resolution).

14 2. If EPA concludes, based on initial or any subse-
15 quent Certification of Completion by Defendant and after a
16 reasonable opportunity for review and comment by the State, that
17 the Remedial Action has been fully performed in accordance with
18 this Consent Decree and that Clean-up Standards have been
19 achieved, EPA will so certify in writing to Defendant. This cer-
20 tification shall constitute the Certification of Completion of
21 the Remedial Action for purposes of this Consent Decree, includ-
22 ing, but not limited to, Section XXVII (Covenant Not To Sue By
23 Plaintiff). Certification of Completion of the Remedial Action
24 shall not affect Defendant's obligations under this Consent
25 Decree that continue beyond the Certification of Completion, in-
26 cluding, but not limited to , access, O&M, record retention, in-
27 demnification, insurance, and payment of Future Response Costs
28 and penalties.

1 B. Completion of the Work

2 1. Within 90 days after Defendant concludes that all
3 phases of the Work, including O&M, have been fully performed, and
4 EPA has determined under Section X (EPA Periodic Review) that no
5 additional periodic review will be performed and no further
6 response action is appropriate, Defendant shall so certify to the
7 United States by submitting a written report by a registered
8 professional engineer certifying that the Work has been completed
9 in full satisfaction of the requirements of this Consent Decree.
10 The report shall contain the following statement, signed by a
11 responsible corporate official of Defendant or the Defendant's
12 Project Coordinator: "I certify that the information contained in
13 or accompanying this submission is true, accurate and complete."
14 If, after review of the written report, EPA, after reasonable op-
15 portunity to review and comment by the State, determines that any
16 portion of the Work has not been completed in accordance with
17 this Consent Decree, EPA will notify Defendant in writing of the
18 activities that must be undertaken to complete the Work. EPA
19 will set forth in the notice a schedule for performance of such
20 activities consistent with the Consent Decree and Section VII
21 (Work To Be Performed) or require Defendant to submit a schedule
22 to EPA for approval. Defendant shall perform all activities
23 described in the notice in accordance with the specifications and
24 schedules established therein, subject to its right to invoke the
25 dispute resolution procedures set forth in Section XXIV (Dispute
26 Resolution).

27 2. If EPA concludes, based on the initial or any sub-
28 sequent Certification of Completion by Defendant and after a

1 reasonable opportunity for review and comment by the State, that
2 the Work has been fully performed in accordance with this Consent
3 Decree, EPA will so notify Defendant in writing.

4 XLI. TERMINATION AND SATISFACTION

5 This Consent Decree shall terminate upon certification by
6 EPA of completion of the Work and that Defendant has satisfied
7 its obligations under Section XX (Reimbursement of Future
8 Response Costs), Section XXI (Reimbursement of Past Response
9 Costs), Section XXII (Stipulated Penalties), Section VIII
10 (Additional Work), and Section X (EPA Periodic Review). Termina-
11 tion of this Consent Decree shall not alter the provisions of
12 Section XVIII (Retention of Records), Section XIX (Reservation of
13 Rights), Section XXVII (Covenant Not To Sue By Plaintiff), Sec-
14 tion XXVIII (Covenant Not To Sue By Defendant), and Section XXXIV
15 (Indemnification and Insurance).

16 XLII. SECTION HEADINGS

17 The section headings set forth in this Consent Decree and
18 its Table of Contents are included for convenience of reference
19 only and shall be disregarded in the construction and interpreta-
20 tion of any of the provisions of this Consent Decree.

21 XLIII. COUNTERPARTS

22 This Consent Decree may be executed and delivered in any
23 number of counterparts, each of which when executed and delivered
24 shall be deemed to be an original, but such counterparts shall
25 together constitute one and the same document.

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1 SO ORDERED THIS _____ DAY OF _____, 1991.

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UNITED STATES DISTRICT JUDGE

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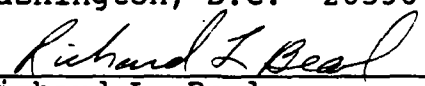
1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Watkins-Johnson Company, relating to
3 the Watkins-Johnson Superfund Site, Scotts Valley, California.

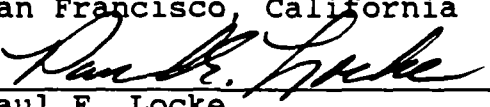
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5 FOR THE UNITED STATES OF AMERICA


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7 Date: July 16, 1991

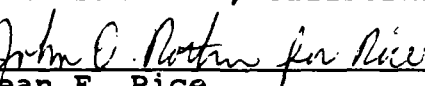
8 Acting


-Richard D. Stewart Barry M. Hartman
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530


Richard L. Beal
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
301 Howard Street, Suite 870
San Francisco, California 94105


Paul E. Locke
Assistant United States Attorney
Northern District of California
U.S. Department of Justice
450 Golden Gate Avenue
San Francisco, California 94102


Daniel McGovern *for*
Regional Administrator, Region IX
U.S. Environmental Protection
Agency
75 Hawthorne Street
San Francisco, California 94105


Jean E. Rice
Assistant Regional Counsel
U.S. Environmental Protection
Agency
75 Hawthorne Street
San Francisco, California 94105

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he/she is an employee of the United States Department of Justice and is a person of such age and discretion as to be competent to serve papers.

That on July 16, 1991, he/she served a copy of the accompanying Consent Decree, that was lodged with the Clerk of the Court on that date, by making personal delivery to the following:

Barry S. Sandals
Morrison & Forester
345 California Street
San Francisco, California 94104

Paul E. Locke, Esquire
Assistant U.S. Attorney
450 Golden Gate Avenue
San Francisco, California 94102
Attorney for Plaintiff the United States

